83-167

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO:

PAULA E. PFISTER,

Petitioner

v.

AMERICAN AIRLINES, INC., a Corporation,

and

BARBARA BAUER (Stewardess Supervisor and Employee of AMERICAN AIRLINES, INC.)

IRVING CURHAN (Director of Flight Service and Employee of AMERICAN AIRLINES, INC.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION,

TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

HONORABLE MANUEL REAL, JUDGE OF THE U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND/OR PETITION FOR WRITS OF MANDAMUS/PROHIBITION OR THE LIKE DIRECTED TO SAID COURT OF APPEALS AND U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

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QUESTIONS PRESENTED FOR REVIEW:

1. Under the Railway Labor Act is a district court justified in its refusal to extend jurisdiction to an aggrieved employee's claim against her employer for wrongful discharge and against union for its complicitous and willful breach of its duty of fair representation obstructing Petitioner's arbitral procedures to vindicate her grievance?

2. Is a district court justified in applying or borrowing a state statute of limitations to federal claims presented by Petitioner under the Railway Labor Act where said Act contains no express limitation of action provision, and if so, was the district court's FAILURE to make not only a correct and proper characterization of Petitioner's claims but to identify specifically what statute of limitation action provision of which state applied to Pfister's claims violative of the purposes and policies of the federal statute and federal rights relied upon by Petitioner?

QUESTIONS PRESENTED (con't.)

3. Is Petitioner's Fifth Amendment due process right irreparably abridged by the gross procedural irregularities committed by the district court and court of appeals in the conduct of her litigation which departures include the conscious destruction of tape transcript evidence presented at the time of oral hearing by Petitioner to the appellate panel and a refusal to permit Petitioner a short continuance to have legal counsel represent her at the oral hearing when her retained counsel was improperly prevented from doing so?

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Reasons for Granting Writs :

I. PETITIONER SUFFICIENTLY INVOKED FEDERAL QUESTION JURISDICTION OF THE DISTRICT COURT UNDER THE RAILWAY LABOR ACT WHERE SHE SUED HER EMPLOYER AND UNION IN A SINGLE ACTION SEEKING TO ADJUDICATE ALL CLAIMS INCLUDING WRONGFUL DISCHARGE WHERE THE ARBITRAL PROCEDURES THROUGH WHICH SHE WAS TO VINDICATE HER GRIEVANCE WERE FLAWED BY THE UNION'S BREACH OF ITS DUTY OF FAIR REPRESENTATION SOLICITED BY HER EMPLOYER. 43

Reasons for Granting Writs: con't.

II. ABSENT AN EXPRESS LIMITATION OF ACTION PROVISION CONTAINED IN THE FEDERAL STATUTE SUED UNDER, THE DISTRICT COURT WAS OBLIGED TO APPLY CALIFORNIA CODE OF CIVIL PROCEDURE SEC. 338(4) CONCERNING AN ACTION BASED UPON FRAUD TO PFISTER'S COMPLAINT WITH SPECIAL ATTENTION GIVEN TO THE DISCOVERY OF THE FRAUD AS ALLEGED BY PFISTER AND THE CONCEALMENT OF SAID CAUSES OF ACTION FROM HER OR IN THE ALTERNATIVE TO APPLY CPLR OF NEW YORK, SEC. 213(1) AND (8) CONCERNING ACTIONS BASED UPON CONTRACT OR FRAUD 54

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OPINIONS BELOW

The subject Orders entered by the District Court forming the basis of the within Petition and, in particular, that Order entered by the District Court sitting as Manuel Real on June 10, 1981, dismissing Petitioner's Complaint and that Order of the District Court sitting as Malcolm M. Lucas, denying Petitioner's Motion to Disqualify District Judge Manuel Real entered June 8, 1981 is unreported at this time.

The U. S. Court of Appeals for the Ninth Circuit Order affirming the decision of the District Court dismissing Petitioner's Complaint filed January 5, 1983 and its Order denying Petitioner's Petition for Rehearing and Suggestion for Rehearing, en banc, filed May 16, 1983 are also unreported at this time.

The subject Orders of the District Court aforementioned above are denominated as Appendix A and Appendix B respectively. The Orders of the U. S. Court of Appeals hereinabove referenced are denominated and appear

as Appendix C and Appendix D.

STATEMENT OF JURISDICTION

Jurisdiction for this Court to grant Petitioner relief for certiorari and to grant the extraordinary relief for mandamus or prohibition also sought is conferred pursuant to Rules 21 and 27 of the Rules of Court and Title 28 of the United States Code Section 1651, The All Writs Act.

Petitioner is seeking review of district court orders entered June 10, 1981 dismissing her Complaint (APPENDIX A) and filed June 8, 1981 denying her Motion to preemptorily disqualify the district court Manuel Real for bias and prejudice against her and in favor of Respondents, Real Parties in Interest (APPENDIX B).

Petitioner also seeks review of the U. S. Court of Appeals affirming the dismissal of Petitioner's Complaint filed January 5, 1983 (APPENDIX C) and the Order denying Petitioner's

Petitioner for Rehearing and Suggestion for Rehearing, En Banc (APPENDIX D).

Petitioner's Application for Stay of Mandate of the U. S. Court of Appeals was granted by the Honorable U. S. Circuit Judge Proctor Hug, Jr. notwithstanding objections of Respondents (Real Parties in Interest), said Order was filed on June 10, 1983 granting Petitioner's Motion for Stay up and through June 16, 1983 as more fully appears as APPENDIX E.

Petitioner's Application to Stay the Mandate of the U. S. Court of Appeals made pursuant to 28 U.S.C. Section 2101 and Rule 41 of the Federal Rules of Appellate Procedure was granted unanimously by the appellate panel who affirmed the dismissal of the district court, more fully denominated as Circuit Judges Goodwin, Hug and Boochever. The subject panel has ordered the mandate further stayed up and through July 30, 1983

as more fully appears at APPENDIX F.

STATUTES INVOLVED

This case involves application of the Railway Labor Act, 45 U.S.C. Section 151 made applicable to airlines by virtue of the provisions of 45 U.S.C. Section 181, et seq. This case further involves the federal statute contained in 28 U.S.C. Sections 1331 and 1337. Statutes are set out in the appendix as APPENDIX G.

This case also involves the application of the State of California's statute of limitation provision, more fully denominated as the California Code of Civil Procedure Section 338, New York's CPLR Statute, Sec. 213, is also set out at APPENDIX G.

CONSTITUTIONAL PROVISIONS

This case involves the Fifth Amendment to the U. S. Constitution, hereinafter referred to as the due process clause, more completely

identified as APPENDIX H and which pertinent provisions provide that "no person shall be ... deprived of life, liberty or property without due process of law..."

STATEMENT OF THE CASE

Petitioner herein, PAULA E. PFISTER, commenced suit against her former employer, Respondent AMERICAN AIRLINES (hereinafter "American"), and various individual respondents employed by AMERICAN and against her Union, Respondent AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION and Respondent TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO (hereinafter Respondent "Union") in the U. S. District Court for the Central District of California for violations of the Collective Bargaining Agreement growing out of Respondent AMERICAN's willful and bad faith termination of Petitioner for taking her aged mother on her first airline trip and for having conspired and colluded with Respondent UNION to improperly thwart

the vindication of Petitioner's grievance through the arbitral machinery mandated by the Railway Labor Act, 45 U.S.C. Section 151, et seq. PFISTER commenced said suit in November 1978 shortly after her discovery of the causes of action which are alleged to have been willfully withheld from her by Respondents acting in conspiracy one with another.

PFISTER further asserts that Respondent AMERICAN solicited and enticed Respondent UNION to breach its statutory duty of fair representation owed to PFISTER and to otherwise repudiate the covenant of good faith and fair dealing contemplated by the fiduciary relationship existing between Petitioner and Respondent UNION and undertook said acts with an intention to cause Petitioner maximum harm, oppression and duress and that they acted in a fraudulent common enterprise to force and induce Petitioner into signing a false and sham settlement agreement effectively aborting Petitioner's

grievance and otherwise calculated to disenfranchise Petitioner of her rights available under the collective bargaining agreement in effect, the Railway Labor Act, and other applicable federal statutes. Petitioner further complains that the fraud and deceit practiced by Respondents acting in combination one with another prevented her from discovering the causes of action asserted in her Complaint.

PFISTER asserts that the Respondent UNION willfully abandoned her grievance for wrongful discharge AFTER they had docketed her cause with the System Board of Adjustment located at: AMERICAN AIRLINES Corporate Headquarters whose address was 633 Third Avenue, New York, New York 10017. Said scuttling of Pfister's representation before the Board was instigated by Respondent AMERICAN with full knowledge by Respondents, both American and UNION, that said acts would have the effect, and did in fact have the effect, of placing PFISTER in a condition of duress and helplessness and otherwise

enabled said Respondents to coerce PFISTER into signing a "sham settlement agreement", wholly wanting in consideration and which otherwise disenfranchised her from all federal rights under the Agreement and under the Act.

That Pfister entered said fraudulent settlement agreement as a direct result of the fraudulent representations of Respondent AMERICAN as were fully set out in her amended complaints and as a result of the UNION's willful and intentional actions in having misrepresented to Petitioner the various nature of her rights under federal law and the collective bargaining agreement in effect, and but for said gross misconduct of Respondents acting in conspiracy and collusion one with another, she would not have executed said agreement extinquishing her grievance before the Board and other federal rights.

Evidence was adduced at the California Unemployment Insurance Appeals Board where Respondent AMERICAN sought to deny PFISTER benefits that Pfister "did NOT intentionally breach a duty owed to her Employer (AMERICAN) nor act in wanton disregard of that duty ... and the Referee (ALJ) finds 'that the claimant was not discharged for misconduct within the meaning of Section 1256 of the California Unemployment Insurance Code!"

PFISTER asserts that the absolution by the California Appeals Board constitutes prima facie evidence that Respondent AMERICAN discharged her in bad faith, thereby breaching the Collective Bargaining Agreement, per se. Further, Respondent UNION, when this evidence was 'bared' and at all material times thereafter, had an affirmative continuing obligation and duty to zealously process her claim before the Systems Board of Adjustment, to fully apprise

her of all of her rights under the Agreement and the Act, to refrain from conduct which was fraudlent and oppressive, to act in a manner which would not compromise the rights or interests of Petitioner, and to otherwise enforce the obligations and terms of the Collective Bargaining Agreement. PFISTER avers that Respondent UNION willfully, wantonly, and with malice of forethought and at the solicitation of Respondent AMERICAN violated not one, but each and every of these affirmative obligations owed to her as part and parcel of their Duty of Fair Representation. PFISTER also complains that Respondent UNION withheld and 'concealed' the disclosure of relevant information, documents, and materials pertaining to her rights and otherwise consciously failed to make a full and complete disclosure to her requisite for the discharge of their Fiduciary duties. Respondent UNION by engaging in said conduct,

not only participated with Respondent AMERICAN, in defrauding PFISTER of her federal claims and collectively-bargained rights, but they are actively alleged to have concealed information from her and made misrepresentations to her in said fiduciary capacity which had the effect of inducing Petitioner to consummate and complete said sham settlement agreement, which in the absence of said fiduciary misconduct by the UNION, she would not have signed.

PFISTER, whose employment commenced in New York and whose Employer and collective bargaining agent were also domiciled and headquartered in New York and whose employment responsibilities were primarily discharged in New York was wrongfully and maliciously discharged in violation of the Collective Bargaining Agreement which was completed in New York City and otherwise administered there. All of the negotiations and deliberations regarding PFISTER's grievance

were initiated and carried out from New York and PFISTER was solicited by Respondent AMERICAN and Respondent UNION acting in fraud and conspiracy one with another to fly to New York City to the Dryden East Hotel, located on 42nd Street in Manhattan to seek to force PFISTER to involuntarily resign and otherwise 'forfeit all of her rights under collective bargaining and relevant federal statutes'. When PFISTER adamantly refused, Respondent UNION willfully and intentionally, and at the instruction of Respondent AMERICAN (pulled out) and withdrew all legal representation and financial support of PFISTER before she ever had an opportunity to have a hearing or otherwise proceed before the Board in New York City. PFISTER alleges that said actions, in combinations with other acts of intimidation, threats and oppression by the UNION in severing all legal, financial

and moral support of her claim which were performed and committed in New York City, not only placed her in a condition of severe duress and vulnerability, but also substantially traumatized her and left her 'defenseless' and otherwise totally uninformed of her rights and standing under the Agreement and federal law. Further, said acts, PFISTER continues, were done with a malice of forethought so that she would never be able to properly vindicate her bad faith discharge nor otherwise be accorded reinstatement and back pay to which she was justly entitled. That further, said acts were undertaken by Respondent UNION for the benefit of Respondent AMERICAN and were also performed to advance the interests and benefit of Respondent UNION at the expense and detriment of Petitioner PFISTER who had taken the same precise trip that numerous other employees of Respondent AMERICAN and members of Respondent UNION had taken, with no travail to them,

but which was the source of PFISTER's wrongful discharge.

PFISTER stripped naked of all representation owed to her by Respondent UNION and otherwise misled and misguided by their acts of misrepresentation, fraud, non-disclosure, oppression, and the like , and further confronted with the false and damaging and willful misrepresentations made by Respondent AMERICAN that she was discharged for 'willful misconduct', which was invalidated by the California Unemployment Appeals Board which held that PFISTER's discharge was improper, was coerced to enter a settlement agreement which major terms were that Respondent AMERICAN would cease and desist from making any further false utterances concerning PFISTER's employment suitability and otherwise removing the false, disparaging and defamatory statements that PFISTER was terminated for misconduct. PFISTER specifically recites in her Complaint, contrary to the relevant Orders of the District Court and Court of Appeals, that said settlement agreement

was entered into because of the fraud and artiface practiced by Respondent UNION and Respondent AMERICAN, one with another. In no way could any of Respondent UNION's conduct or actions be regarded or construed as having "aided" or "assisted" PFISTER in the proper and lawful resolution of her grievance.

PFISTER because of the obstacles and impediments erected by Respondent AMERICAN was unable to seek re-employment with other airline carriers, and as she alleges in her Complaint, she did not discover the fraud and deceit carried out against her by Respondent AMERICAN, in combination and collusion with Respondent UNION, until she specifically 'tested' the purported settlement agreement she was fraudulently induced to execute. Petitioner complains that she could not in the exercise of due diligence have discovered the fraud and deceit because she did actively or seriously seek employment with other airline carriers until a period three (3) years from the commencement of the

within action." Further, that she had no way of knowing the true condition of the records and false and damaging information communicated by Respondent AMERICAN, notwithstanding the settlement agreement, which false communications included statements stating that Petitioner was "a personnel problem", was never employed by AMERICAN for the five (5) years she was, in fact, employed by them, was unsuitable for an airline position, was "dishonorable and dishonest" and could not be trusted for employment purposes and other such disparaging statements.

Petitioner further states that the acts aforementioned were outrageous, and unspeakable, continuing in duration, and committed from one year from the date of filing of the subject Complaint and "together with the causes of action therein, had been willfully concealed from plaintiff (petitioner) by defendants willful and intentional acts preventing their discovery until one (1) year from the filing of the

subject lawsuit. This was particularly harmful in light of the excellent performance and work record that Petitioner PFISTER enjoyed.

Petitioner did not learn that she had been 'blacklisted' with all other major carriers by the actions of Respondent AMERICAN and Respondent UNION, notwithstanding the subject settlement agreement, and further specifically complains that the fraud and deceit practiced by Respondents and, in particular, Defendant UNION, was not discovered by Petitioner until a date three (3) years before the commencement of the within action and Petitioner further stated that the Respondent AMERICAN obscured and frustrated the discovery of said fraud and deceit for both the benefit of Respondent AMERICAN and Respondent UNION and "was thwarted by defendant AMERICAN who willfully refused to permit plaintiff (petitioner) to examine and review her personnel file and employment history to ferret out any abuses or false or disparaging information contained therein." (See APPENDIX T)

PFISTER complains that she was specifically 'stonewalled' by Respondent AMERICAN respecting all her inquiries and that the actions of Respondent AMERICAN in refusing her access to her personnel file and other pertinent documents and information was intended to, and did constitute, a fraudulent concealment of facts and the causes of action which PFISTER has recited in her complaints on file herein.

The most dramatic evidence of this 'concealment' was best furnished by PFISTER herself at the time of Oral Hearing when, because the appellate court refused to grant her a continuance to be represented by counsel (after her retained legal counsel was blocked from representing her improperly), she was compulsed to represent her own cause. At the time of said hearing on November 4, 1982, Petitioner PFISTER was specifically asked by the appellate panel ... "WHEN AND AT WHAT TIME DID YOU ACTUALLY DISCOVER these causes of action?" Appellant, Petitioner

herein, testifying in response thereto, answered unequivocally ... "I discovered the causes of action in 1978." Under these facts and a review of the docket of this litigation which shows that the Petitioner filed her original complaint on November 1, 1978, it is unassailable that Petitioner's claims were not, and should not, be construed under any circumstance to be time-barred in view of the discovery date of the causes of action which was totally and completely proper and justified in light of the willful 'stonewall' of information and 'concealment' of the causes of action by Respondent AMERICAN, in combination with Respondent UNION, seeking to obscure and obsfucate their liability and misconduct.

PFISTER upon discovery of the causes of action forming the basis of the instant Complaint, forthwith and with the utmost of dispatch, prepared and filed the subject action on November 1, 1978 -- no more than a few months after she

learned of them.

DISTRICT COURT PROCEEDINGS:

PFISTER sought resort in the district court on November 1, 1978 pursuant to the diversity jurisdiction, 28 U.S.C. Sec. 1332 and again on February 14, 1979. These complaints were dismissed by the district court, sitting as the Honorable Warren Ferguson, because Petitioner was unable to secure complete diversity over all of the named defendants herein. Leave was granted Petitioner to file a second amended complaint which plaintiff/petitioner filed on June 12, 1979 which asserted jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1337, and as well as the provisions of 29 U.S.C. Section 185. Notwithstanding that Sec. 1337 jurisdiction was invoked by Petitioner, i.e. "any act regulating commerce", the district court sitting as the Honorable Warren J. Ferguson having the matter come before the court

on Respondents' Motion to Dismiss for failure to adequatelyallege jurisdiction based upon a federal question, entered an Order on August 28, 1979 dismissing the Petitioner's second amended complaint with sixty (60) days leave to amend to plead under the Railway Labor Act in lieu of the Labor Management Relations Act. The District Court's Order indicated that the plaintiff could state causes of action against her union for breach of the duty of fair representation and against AMERICAN for inducement or otherwise participating in the breach. The court further cautioned plaintiff that any allegations of wrongful discharge were within the exclusive jurisdiction of the National Railroad Adjustment Board. The Order of the District Court made it clear that if Petitioner did amend under the Railway Labor Act that it would not countenance in Federal Court any claim for breach of the collective bargaining

agreement stemming from the wrongful and malicious discharge of Petitioner by Respondent AMERICAN notwithstanding the averments in PFISTER's second prayer that her ability to vindicate her claim for wrongful discharge had been illegally "compromised and impaired" by the Respondent UNION's conscious and willful breaches of its duties of fair representation instigated by Respondent AMERICAN and undertaken for the collective benefit of AMERICAN and UNION acting in conspiracy one with another.

PFISTER armed with the mandate of the U. S. Supreme Court in Vaca v. Sipes, 386 U.S. 171 (1966) and Glover v. St. Louis-S.F.R. Co., 393 U.S. 324 (1969) and Hines v. Motor Freight, Inc., 424 U.S. 554 (1976) whose force commanded that all of PFISTER's claims, including her claim for wrongful discharge, properly invoked the subject matter jurisdiction of the district court, and otherwise challenged the 'bifurcation'

concept implicit in the district court's Order, sought immediate recourse in the U. S. Court of Appeals for the Ninth Circuit on September 17, 1979. PFISTER's efforts were motivated by judicial economy and reduction of expenses to all litigants involved, since Respondents had made it clear that even if Petitioner were to amend her complaint to plead under the Railway Labor Act (notwithstanding that jurisdiction in the district court attached as a result of the UNION's breach of its duty of fair representation and AMERICAN's complicity in it sufficient for 28 U.S.C. Section 1337 jurisdiction), they would still challenge the subject matter jurisdiction in the district court. PFISTER invoked the processes of the appellate court to have them validate her assertion of jurisdiction. PFISTER

argued in her Appeal that a district court has sufficient primary jurisdiction over an employer and union in a single action to adjudicate all claims for relief, including wrongful discharge, where the arbitration process had been corrupted by the UNION's breach of its duty of fair representation in complicity with the Employer. Additionally, Petitioner PFISTER asked the Court of Appeals to exercise its curing powers under 28 U.S.C. Sec. 1653, inasmuch as all parties to the litigation understood that the Railway Labor Act was the governing statute respecting PFISTER and the Respondent Employer AMERICAN and Respondent UNION, and that the duty of fair representation exists with the same persuasiveness under 45 U.S.C. Sec. 181 as it does under 29 U.S.C. Sec. 185.

At no point in time from November 1, 1978 up and to March 26, 1981 did ANY of

Respondents ever seek to challenge the timeliness of Petitioner's claims, but simply challenged the subject matter jurisdiction of the district court to adjudicate her claim.

After PFISTER had fully briefed her Appeal, denominated as No: 79-3581, and had in all ways discharged her responsibilities to the appellate court with respect to perfecting the record on appeal, and after nine (9) months of having her appeal before the court, the Court of Appeals consisting of Circuit Judges Poole and Norris sua sponte dismissed the appeal for lack of jurisdiction. Again, on January 28, 1981, said Court of Appeals rebuffed Petitioner and denied her motion for reconsideration. The mandate of the Court of Appeals dismissing the aforereferenced appeal was not filed and spread in the district court until March 11, 1981. The Court of Appeals, by its actions therein, effectively abused

Petitioner's rights to have her questions answered and otherwise ducked the issues which were ripe for adjudication on appeal and sent the matter back to the district court. Interestingly, the U. S. Court of Appeals for the Eighth Circuit, in Raus v. Brotherhood Ry. Carmen of U.S. and Canada, 663 F.2d 791 (1981), was confronted with the same factual parameters as PFISTER had presented in her appeal -- No: 79-3581. Of greater moment, that presented with the same circumstances as PFISTER, the Court of Appeals "cured" the defect in jurisdiction which was alleged under 29 U.S.C. Sec. 185 and otherwise indicated that when a plaintiff (such as petitioner did) makes allegations of collusion in her complaint tying the employer and union together in denying the employee her rights under the collective bargaining contract and Railway Labor Act, she sufficiently invokes

the subject matter jurisdiction of the district court. That PFISTER was not accorded by Circuit Judges Norris and Poole the legal benefit and protections extended by the Raus court is a difference without any valid legal distinction. Further, it is highly suggestive of a mis-utilization of the judicial process, perhaps unwittingly, to spawn additional litigation expense, anguish and congestion in having a proper judicial response provided to Petitioner whose legal claims had already been substantially obsfucated by Respondents in the litigation process.

Prior to the mandate of the Court of Appeals being filed on March 11, 1981, Petitioner filed her third amended complaint (March 3, 1981) in the U. S. District Court. PFISTER's apprehensions regarding the challenge to her third amended complaint even though it was properly reaverred under the Railway Labor Act were not misplaced, for Respondents moved forthwith attacking the subject matter jurisdiction of

the district court, just as PFISTER apprised the Court of Appeals they would, notwithstanding her amendment. On April 20, 1981, the U. S. District Court, sitting as the Honorable Warren J. Ferguson who had been elevated more than six months previously to the U. S. Court of Appeals for the Ninth Circuit as a circuit judge, presided at a hearing on Respondents' Motion to Dismiss PFISTER's third amended complaint. During the course of the oral hearing the district court made it clear that he intended to have the cause proceed to trial and even made references to "piggy-backing damages at the time of trial." After Petitioner and Respondents had presented oral argument, the district court abruptly closed the proceedings and left the courtroom. Some time thereafter, an Order was entered by the Honorable Warren J. Ferguson reassigning the matter to be heard

by an alternate district court since he was of the opinion ... "that he should not try said case by reason of the fact that as a circuit judge he can no longer handle the case." There is no Order received by Petitioner indicating that Judge Ferguson did not anticipate the matter not proceeding to trial.

That on June 2, 1981 by Petitioner and Petitioner's counsel on their own initiative having learned by checking with the Clerk that a status conference on the aforementioned litigation was sua sponte set to be heard on June 1, 1981 by virtue of an Order dated purportedly May 28, 1981. That Petitioner contacted the Clerk on June 4, 1981 and was advised that the motions to dismiss which had been presented and argued before Judge Ferguson on April 20, 1981 were now mysteriously reinstated to be heard on June 8, 1981 by Manuel Real, U. S. District Judge.

That before the Motion and prior to any oral argument on said motion being made before the U. S. District Court Manuel Real, Petitioner and her counsel made preemptory challenge to Judge Real's participation in these proceedings pursuant to 28 U.S.C. Sec. 144 and California Code of Civil Procedure Sec. 170.6. The affidavit was served upon the judicial officer as well as respondents. Concurrently with the service of said document, the U. S. District Judge suspended the proceeding and continued it to the afternoon of June 8, 1981. At the time prior to commencement of proceedings that afternoon, Judge Real advised the parties that Malcolm M. Lucas, U. S. District Judge, had ruled on Petitioner's Application for Disqualification and had denied same (without oral hearing furnished Petitioner and without notice that Judge Lucas would be acting on said petition). Petitioner assigns this as significant inasmuch as Judge Lucas was adjudicating another litigation pending in the district

court where his judicial conduct had been questioned by Petitioner and Petitioner's counsel, thereby providing a basis for recusal of Judge Lucas to rule on Judge Real's Application for Disqualification. District Court Real refused to abide Petitioner's preemptory challenge, and for that matter, stated there was no preemptory challenge under the federal rules, nor did said district judge, despite Petitioner's request, stay the subject proceedings on the motions to dismiss to allow Petitioner an opportunity to pursue a writ with the court of appeals or this Court (Supreme Court) to furnish such additional information and facts so as to command his disqualification. After oral argument (none of which was advanced by respondents), Respondent Judge Real dismissed Petitioner's Third Amended Complaint on the basis that Petitioner failed to apply for leave to file her third amended

complaint; her action was barred by the applicable statute of limitations; plaintiff failed to state any facts sufficient to toll the applicable statute of limitations; and plaintiff's allegations failed to state a claim under federal law (which was handwritten). Petitioner's Third Amended Complaint was dismissed without leave to amend. JUDGMENT was entered on June 10, 1981 (APPENDIX A) and Petitioner filed her Notice of Appeal promptly on June 17, 1981 vesting jurisdiction in the U. S. Court of Appeals for the Ninth Circuit.

PROCEEDINGS IN THE U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT (JUNE 17, 1981 THRU PRESENT TIME):

Commencing on June 17, 1981 Petitioner with the aid of her trial counsel, also representing her on appeal before the Ninth Circuit, conscientiously and responsively prosecuted the appeal from Respondent REAL's Order of

June 10, 1981 and in May 1982, almost one year later, her cause was fully briefed before the Ninth Circuit Court of Appeals by her undersigned counsel. In January 1982, prior to the brief being filed, Petitioner pursuant to the Federal Rules of Appellate Procedure, and Rule 10, moved to "cure the reporters transcripts for material deficiencies and misstatements contained therein". Said Motion to Cure was denied by the U. S. Court of Appeals. Many of the alterations occurring in the transcripts if properly cured would have demonstrated that the district court sitting as Warren J. Ferguson had every intention of having Petitioner's cause proceed to trial, and did not have any intention of granting Respondents' Motion to Dismiss Petitioner's third amended complaint.

During the same proceeding of the instant appeal from which this Petition follows (Appeal No: 81-5550), the U. S.

Court of Appeals Circuit Judges Norris and Wright willfully, and in furtherance of a conspiracy, prevented Petitioner's undersigned counsel from representing her before the U. S. Court of Appeals for the Ninth Circuit despite his outstanding reputation as a federal practitioner and appellate advocate. Shortly before her cause was set for oral argument in November 1982, Petitioner learned that her undersigned counsel would not be permitted to represent her at the time of oral argument. On October 25, 1982, in light of the facts discussed hereinabove and prior to the merits panel being appointed, Petitioner filed an Emergency Motion for Continuance allowing her to secure alternate legal counsel to argue her appeal on November 4, 1982 (see APPENDIX I). On October 28, 1982 Petitioner's Emergency Motion for Continuance was denied and Petitioner was informed that she had to proceed pro se or to submit on the briefs (see APPENDIX J). At the time

of oral argument on November 4, 1982 before Circuit Judges Hug, Boochever and Goodwin, Petitioner protested the fact that her attorney, the undersigned counsel, was prevented from representing her before the court, and her right of due process was grossly, adversely affected by the failure of the court to afford her a continuance to enable alternate legal counsel to urge her cause on appeal on oral argument and to otherwise provide her with a "meaningful hearing on the substance of her appeal."

Petitioner had also filed a Motion to Strike Appellees' Designation of Clerk's Record for Fraud and requested imposition of sanctions on appellees, respondents herein, for material misrepresentations and alterations of the Record on Appeal as constituted by the Clerk of the District Court. Said Motion more fully appears at APPENDIX K . Petitioner was further advised by ORDER of the Court that said Motion to Strike for Fraud would be referred to the Merits Panel,

i.e., Circuit Judge Hug, Boochever and Goodwin for their disposition at oral hearing on November 4, 1982. This more fully appears at APPENDIX L . At no time up to the present has any order been issued by any member of the panel or any member of the Ninth Circuit concerning Petitioner's Motion to Strike for Fraud committed by Respondents. Various papers sought to be filed pertinent to the fraud and Petitioner's cause on appeal were summarily rejected by the Clerk of the U. S. Court of Appeals.

At the time of oral hearing on November 4, 1982 Petitioner, appearing on her own behalf, as the result of the court's refusal to grant her a continuance to secure additional counsel, furnished testimony to the appellate panel in response to their questioning to her as to "when she actually discovered the causes of action"forming the basis of her Complaint and action. Petitioner unequivocally testified

in no uncertain way that she had not discovered the wrongs and had been otherwise frustrated from doing so until sometime in 1978 and initiated her Complaint immediately thereafter in the same calendar year, 1978. These facts can be corroborated by other third parties who were percipient to the oral hearing held on November 4, 1982 held at the U. S. Court of Appeals. That said oral hearing was duly recorded by tape recorder on November 4, 1982.

On January 5, 1983 the aforestated panel of the court of appeals entered an order affirming Respondent REAL's dismissal of PFISTER's actions, as more fully appears at APPENDIX C. PFISTER perfected and filed a timely petition for rehearing and suggestion for rehearing, en banc, and stayed the Order and mandate in the appeal automatically. On May 16, 1983, the aforementioned circuit panel denied

rehearing and also denied suggestion for rehearing, en banc. Petitioner sought timely Stay of the court's mandate after Rehearing was rejected and the said Petition for Stay of Mandate was GRANTED initially by Circuit Judge Proctor Hug, Jr., up to and including the 16th day of June 1983. The Mandate was further stayed pursuant to the Application of Petitioner by the full appellate panel consisting of Circuit Judges, Hug, Boochever and Goodwin, and said mandate has been ordered stayed up and to July 30, 1983. (Said Orders appear at APPENDIX E and F respectively.)

At the time of oral hearing on November 5, 1982, Petitioner testified as to matters within her knowledge concerning the actions of the Respondent UNION and Respondent AMERICAN occurring in New York City, New York, when she was flown back by Respondents to review "her grievance" which had been filed before the Systems Board of Adjustment, but never prosecuted by the UNION nor adjudicated by the Board. She stated how in no uncertain

way she had been distraught and suffered enormous mental and emotional anguish after the UNION sought to have her "quit her employment" and informed her that they would not press her grievance before the Systems Board, even though docketed by them, and that they would furnish her no financial, legal or moral support, and did not furnish Petitioner with any reasons why "they were pulling out" all representation of her. Petitioner further advised the appellate panel that the UNION never apprised her of her rights under collective bargaining contract or under the appropriate federal statutes.

After the U. S. Court of Appeals denied Petitioner's Rehearing and Suggestion for Rehearing, en banc, and before any mandate had issued (it should be pointed out that no mandate has issued in this case), PFISTER directed a letter to the Clerk requesting the transcripts of the oral hearing held on November 4, 1982. Said request appears at

APPENDIX M and is dated May 22, 1983. That on June 7, 1983 the Clerk of said U. S. Court of Appeals in San Francisco informed Petitioner that she should secure the tapes of the proceedings by contacting the Clerk, U. S. Court of Appeals Office in Los Angeles (as more fully appears at APPENDIX N). On June 9, 1983 Petitioner abiding the Clerk's instructions went directly in person to the U. S. Court of Appeals for the Ninth Circuit and spoke to Deborah Mayfield and Winifred Taylor, Sr. Deputy Clerk. A letter was furnished to Petitioner by Deputy Clerk Mayfield after she had contacted the judges concerning the tapes, as more fully appears at APPENDIX O. On June 17, 1983 Petitioner not having received any response from Ms. Mayfield directed an additional letter appearing as APPENDIX P. On June 20, 1983 the Clerk's Office by Winifred D. Taylor, advised Petitioner that the tapes had been "erased". Petitioner's counsel who had been prevented from representing her at

the time of oral argument was also advised by letter dated June 15, 1983 that the tapes had been erased, as more fully appears at APPENDIX Q&R. Petitioner respectfully states that these tapes were in existence according to Patrick Fisher and Deborah Mayfield as late as June 9, 1983 when Petitioner and her counsel personally appeared at the Clerk's office at the courthouse. Further no mandate had ever been issued in this matter. Therefore, the subject tapes were destroyed sometime AFTER June 9, 1983 while they were under the sole, exclusive control of Winifred D. Taylor, Sr. Deputy Clerk for the U. S. Court of Appeals in Los Angeles, California. PFISTER outraged at this revelation and shocked by it directed a letter to Winifred D. Taylor, Custodian of said tapes, having sole control and dominion over said tapes, indicating that the "erasing of evidence" and her tapes constituted a serious offense and outside of the scope of the legal process (see APPENDIX S).

Petitioner now invokes this Court's powers of review pursuant to its certiorari authority and its supervisory powers contained in 28 U.S.C. Sec. 1651 to cause a full judicial review of the orders of the District Court and Court of Appeals hereinabove referenced and to otherwise prohibit and oversight the gross and egregious improprieties, procedural and otherwise, which have irreparably detrimented Petitioner's rights to a fair trial guaranteed by the U. S. Constitution, and more specifically, the Fifth Amendment thereunder. Accordingly, this Petition for Writ of Certiorari and/or Writs of Mandamus, Prohibition or the like is prayed and is now properly before the United States Supreme Court.

REASONS FOR GRANTING WRIT

I.

PETITIONER SUFFICIENTLY INVOKED FEDERAL QUESTION JURISDICTION OF THE DISTRICT COURT UNDER THE RAILWAY LABOR ACT WHERE SHE SUED HER EMPLOYER AND UNION IN A SINGLE ACTION SEEKING TO ADJUDICATE ALL CLAIMS INCLUDING WRONGFUL DISCHARGE WHERE THE ARBITRAL PROCEDURES THROUGH WHICH SHE WAS TO VINDICATE HER GRIEVANCE WERE FLAWED BY THE UNION'S BREACH OF ITS DUTY OF FAIR REPRESENTATION SOLICITED BY HER EMPLOYER.

Petitioner is before this Court by virtue of her writs of certiorari and writs seeking extraordinary relief to cure and correct orders of the District Court which have been judicially sanctified by the U. S. Court of Appeals for the Ninth Circuit. Petitioner PFISTER summons this Court's assistance to have its mandates promulgated in Vaca v. Sipes, supra, and Glover v. St. Louis-S.F.R. Co., supra, and Hines v. Motor Freight, Inc., supra, respected by the U. S. Court of Appeals for the Ninth Circuit because the subject orders of the District Court (APPENDIX A) and the orders

of the U. S. Court of Appeals (APPENDIX C and D) affirming, violate the letter and spirit of this Court's mandates as enunciated in Vaca, Glover and Hines hereinabove cited. Further, said Order of the Court of Appeals violates the numerous authority in the Ninth Circuit itself holding that a district court has sufficient primary jurisdiction whenever an employee, such as PFISTER, is seeking damages for wrongful discharge and has alleged that the UNION has breached its duty of fair representation to her, thereby frustrating the vindication of her cause before the Board. Further, PFISTER in light of the allegations in her Complaint is under no compunction to exhaust any of her remedies under the terms of the collective bargaining agreement or provisions of the RLA. (See Margetta vs. Pam Pam, 501 F.2d 179 (9th Cir. 1974); Price vs. So. Pacific Transp. Co., 586 F.2d 750 (9th Cir. 1978).

In short, PFISTER is seeking this Court's intervention because the Ninth Circuit Court of Appeals has not accorded deference to this Court's mandate as cited in Vaca, Glover and Hines, but also has acted in a manner totally anathema to its own mandates in Pam Pam, and Price. Of further interest, is a Ninth Circuit case captioned Franklin v. So. Pacific Transport Co., 593 F.2d 899 (1979) which extrapolated this Court's Glover mandate holding that under the Railway Labor Act ... "an aggrieved employee has the right to bypass the adjustment board and bring a wrongful discharge action in the district court when his union (such as PFISTER's union) is guilty of a breach of the duty of fair representation."

The judicial topography in each of the ten circuits shows almost a universal consensus that PFISTER's claims for wrongful discharge, as well as the breach of the duty of fair representation would all be cognizable in

the district court notwithstanding PFISTER's failure to "exhaust" her remedies before the Systems Board of Adjustment. (See Schum v. So. Buffalo Ry., 496 F.2d 328 (2nd Cir. 1974); Raus v. Brotherhood Ry. Carmen of U.S. and Canada, 663 F.2d 791 (8th Cir. 1981); and Richins v. Southern Pacific Co., 620 F.2d 761 (10th Cir. 1980).

The vitality of PFISTER was grossly misperceived by both the district court and court of appeals inasmuch as PFISTER has alleged in her Complaint that she was frustrated in her attempts and otherwise directly thwarted because of the numerous violations, intentional and willful in nature, committed by Respondent UNION in its discharge of its fiduciary duty to represent PFISTER's interest as reasonable prudent men, free from discrimination and oppressiveness. The factual contours of PFISTER's Complaint leaves little doubt that Respondent UNION was acting in fraud and

collusion with Respondent Employer to obstruct PFISTER's plight to cure her wrongful discharge and specifically breached its duty of fair representation by abandoning PFISTER's grievance after it had been docketed with the Board, by seeking to force her to resign, by withdrawing and severing all financial, legal and emotional support, by misinforming and misrepresenting the nature of PFISTER's rights under the contract and RLA, and by further willfully failing to make disclosures material in nature to PFISTER regarding the various avenues of redress available to her under the contract and RLA and otherwise acting in a manner intending to conceal facts and causes of action growing therefrom.

PFISTER who sought to have the Ninth Circuit Court of Appeals act back in 1979 to have the district court comply with the mandates of this Court and its own mandate, as well as those in other circuits--all of which fortify federal jurisdiction over PFISTER's claims--was rudely

rebuffed by that court after her cause was fully briefed and after the Ninth Circuit was apprised that gross departures from the mandate of this Court were occurring respecting, in particular, the bifurcation of PFISTER's claim between the Systems Board of Adjustment and federal district court. Indeed, PFISTER beseeched the Ninth Circuit to correct the district court's erroneous assumption that the RLA presented a legal compunction to PFISTER to have her cause adjudicated initially by the National Railroad Adjustment Board (the Systems Board of Adjustment in the instant case). As history unfortunately repeats itself, so, too, does judicial obtuseness. As PFISTER's appeal was dismissed sua sponte in October 1979 by the Ninth Circuit who failed to give deference to this Court's mandates regarding complete jurisdiction over PFISTER-type hybrid claims in the district court, so, too, did the U. S. Court of Appeals for the Ninth Circuit affirm

APPENDIX C and D the Orders of the District Court (APPENDIX A) dismissing PFISTER's prayer for failure to state a federal claim because she did not sufficiently invoke federal question jurisdiction.

Such aberrant decision-making, in addition to protracting PFISTER's day in court, substantially diminishes the judicial process as a whole. That PFISTER was consciously connived out of her rights under the collective bargaining agreement and RLA by Respondent UNION, together with the complicitous employer is cause enough for judicial concern. However, when the district court with the apparent blessing of the court of appeals on two separate occasions tells PFISTER that she is not welcome in the U. S. District Court, their misguided discretion elevates to gross judicial malfeasance and misfeasance requiring this Court to act forthwith by issuing an appropriate writ of certiorari, or in the alternative, a writ of prohibition, mandamus, or the like restoring PFISTER's

Complaint and each and every cause of action asserted therein.

In a recent case determined in March 1980 by Sr. District Judge Garrity, the same real party-in-interest respondents -- Employer AMERICAN and UNION, TWU of America -- were before the court seeking to impose the same judicial sophistry that seemed to be persuasive to Respondent REAL and Respondent U. S. Court of Appeals for the Ninth Circuit. Fortunately, the scrutiny brought to the litigation by Judge Garrity was able to pierce a sophistry that obviously placed its spell on both the district court and court of appeals who issued the judgments and orders which form the basis for this petition now pending before the Court. (See Hennebury v. Transport Workers Union of America, Local 507 and AMERICAN AIRLINES, 485 F.Supp. 1319 (1980).

In Schum v. Buffalo Ry. Co., supra, the U. S. Court of Appeals for the Second Circuit

perceptively describes the duties that grieving employees such as PFISTER expect from their collective bargaining representative. As the court stated:

> "Schum was seeking to protect one of his most basic rights in the employee-employer relationship--the right not to be wrongfully discharged. As a general rule, grievances do not succeed without the full support of of the union. Normally employees do not have the expertise, knowledge or experience to interpret the complicated substantive and procedural provisions of a collective bargaining agreement. In addition, specialized skill and insight are required at the higher levels of the grievance procedures to investigate and marshall the relevant facts and law, to prepare adequate petitions and briefs, to comply with the intricate limitations periods common to all labor contracts, and to present persuasive arguments to the board of arbitration."

The Schum court went on to promulgate a rule which obtains to PFISTER and was grossly ignored by the Ninth Circuit. Phrased simply, the Schum proposition is that an employer cannot erect a defense of non-exhaustion to

bar an employee's claim for wrongful discharge if that employee, such as PFISTER, has reasonably relied upon the union and to exercise its duty of fair representation to her. The court further finds support in the Ninth Circuit decision of Retana v. Apartment, Motel, Hotel & El. Op. U., Loc. No. 14, 453 F.2d 1018 (1972). Retana holds that the plaintiff's right to initiate her claim even though personal to her was not a bar to her maintaining a suit against her employer and further stated that non-exhaustion was excused by the union's failure to act "without rational justification" and by the union's "failure to advise her of her contract rights." id. at 1027.

When the subject Orders of the district court and court of appeals affirming are tested against the mandates of this Court and each of the authorities presented by Petitioner herein, the conclusion is irresistible that the subject

Orders are infirmed and offend the mandates of this Court requiring that they be immediately vacated, and that Petitioner's action be reinstated in the district court with a full command issuing that said district court oblige the mandates respecting federal jurisdiction which form the basis of this Court's holdings in Vaca, Glover, Hines and the like.

II.

ABSENT AN EXPRESS LIMITATION OF ACTION PROVISION CONTAINED IN THE FEDERAL STATUTE SUED UNDER, THE DISTRICT COURT WAS OBLIGED TO APPLY CALIFORNIA CODE OF CIVIL PROCEDURE SEC. 338(4) CONCERNING AN ACTION BASED UPON FRAUD TO PFISTER'S COMPLAINT WITH SPECIAL ATTENTION GIVEN TO THE DISCOVERY OF THE FRAUD AS ALLEGED BY PFISTER AND THE CONCEALMENT OF SAID CAUSES OF ACTION FROM HER OR IN THE ALTERNATIVE TO APPLY CPLR OF NEW YORK, SEC. 213(1) AND (8) CONCERNING ACTIONS BASED UPON CONTRACT OR FRAUD.

For the better part of three years, none of Respondents raised any timeliness challenge to PFISTER's Complaint, but sought to invalidate her action on the basis that it did not state a federal claim. After the court of appeals sua sponte dismissed her earlier appeal in October 1980, directing Petitioner to file a third amended complaint in district court, Respondents were given a new breath of life and sought to, in March 1981, block PFISTER's claims on the basis that they were barred by the applicable statute of limitations. Of great interest is that neither the federal statute sued under by PFISTER, i.e., the Railway Labor Act, nor the Respondents indicated what the appropriate statute of limitations would be.

This Court's holding in Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 86 S.Ct. 1107 makes it clear beyond cavil that in the absence of a federal statute of limitations provision, a district court, as a matter of federal law, may borrow an appropriate state statute of limitation and making a determination of which state statute of limitation period is most appropriate depending on the nature of the federal claim and federal policy involved. Of equivalent dignity is this Court's admonition in its decision of Occidental Life Insurance Co. v. EEOC, 432 U.S. 355, 97 S.Ct. 2247 wherein the Court stated:

> "The Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute. State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies...State limitations periods will not be borrowed if their application would be inconsist with the underlying policies of the federal statute."

Thus, PFISTER presents two questions to this Court: 1) Is the federal policy undergirding the Railway Labor Act frustrated by the application of a state statute of limitations to PFISTER's claims; and 2) Did the district court in its selection and application of its state statute of limitations actively frustrate PFISTER's rights to be protected under the appropriate federal statutes?

PFISTER argues that the borrowing of state statutes in governing her claims for relief against respondents is not per se offensive, but does vigorously attack the particular statutes that have been borrowed and the patently unreasonable manner in which the district court and court of appeals apply them to the contours of her litigation. The grist of Petitioner's prayer is that she was defrauded by her union and employer in having executed a sham settlement agreement which extinguished her claim before the Board prior to any adjudication and whereby she otherwise

was forced to waive and surrender important federal rights under the collective bargaining agreement and appropriate governing federal statutes. PFISTER goes on to complain that but for the UNION's breach of the duty of fair representation consisting of the UNION's abandonment after the docketing of her grievance with the Board by their failure to apprise her of valuable rights under the contract, by their attempts to force her to resign and by their otherwise actions not in the exclusive best interest of PFISTER, she would never had entered into the sham, bogus settlement agreement in November 1972. Further, PFISTER has made sufficient allegations in her Complaint (APPENDIX T) indicating that she was unable to discover the fraud and that Respondents in combination and collusion one with another concealed her personnel file from her and denied her access to same. Assuming arguendo that the district court was correct in applying California law (which PFISTER does not assent to), PFISTER's claim would still

be timely under Sec. 338(4). In short, this provision compulses PFISTER to bring her action within three (3) years after she discovered the facts constituting the fraud. No cause of action comes into existence until discovery. Under this set of conditions, PFISTER's claims were all efficacious and not time-barred because as she indicated at the time of oral hearing on November 4, 1982 in response to direct questioning from the Panel, she did not discover her causes of action until 1978, the same year the Complaint was initiated in the district court. PFISTER asserts that the obsessive attempts of the district court and court of appeals to bar her claim (it should be noted that the district court made no determination as to what statute was applicable) were a gross abuse of discretion inasmuch as they ignored the substantial allegations of fraud made by PFISTER throughout her Complaint. In the alternative Petitioner also states that the subject Orders offend the mandate of the Second Circuit in the case of Abrams v. Carrier Corp., 434 F.2d 1234 (1970) wherein the court applied

New York's six-year limitation period for an action based upon a contractual obligation or liability express or implied to the employee's action against his employer for breach of the collective bargaining agreement. At this juncture, the Court is redirected to the salient facts in PFISTER's Complaint wherein she states that she was forced under duress, coersion, trickery and the like to enter a settlement agreement in November 1972. She commenced suit on the basis of said settlement agreement whose terms were controlled by Respondent UNION and Employer both domiciled in New York City. It would appear that the district court committed egregious reversible error by not making a determination as to which state statute of limitations applies to PFISTER's claims. Under either computation, California's statute of limitations for fraud or New York's statute of limitations for contract or fraud, PFISTER's prayer is in all ways timely. Alternatively, Petitioner seeks this Court's supervisory writs

because of its recent holdings in United Parcel Service, Inc. v. Mitchell,101 S.Ct. 1559 (1981). The wide variances of state borrowing respecting the hybrid-types of claims as embodied by PFISTER requires immediate intervention by this Court for purposes of clarification and uniformity and to ensure that federal policies of the Act are being effectuated, not obliterated, as PFISTER's claim has been. Petitioner further prays that the Order of the district court is infirmed for its failure to apply any specific statute of limitations to her claims and the orders of the court of appeals are similarly flawed because they improperly apply and interpret state statute of limitations in a manner which bars PFISTER federal relief for her claims properly cognizable in the district court.

III

THE GROSS IRREGULARITIES COMMITTED BY THE DISTRICT COURT AND COURT OF APPEALS IN THE CONDUCT OF PETITIONER'S LITIGATION INCLUDING THE WILLFUL DESTRUCTION OF TAPE TRANSCRIPTS OF HER ORAL HEARING AND HER DENIAL TO HAVE A CONTINUANCE FOR PURPOSE OF SECURING LEGAL COUNSEL AFTER HER COUNSEL WAS IMPROPERLY PREVENTED FROM ADVOCATING HER CAUSE CONSTITUTES A GROSS DEPARTURE FROM ACCEPTABLE JUDICIAL PROCEDURE REQUIRING THIS COURT'S INTERVENTION.

PFISTER hereinabove has urged this Court to reverse and vacate Orders of the district court and court of appeals because of the substantive deficiencies of the subject orders on the merits Petitioner presents. Assuming arguendo that none of the above were persuasive to this Court, PFISTER is summoning assistance to have this Court exercise its supervisory writs as well as its conventional certiorari authorities to review and oversight and cure the egregious, procedural abnormalities that have been visited upon her by the actions of the district court, Respondent REAL herein, and by the U. S. Court of Appeals for the Ninth Circuit.

PFISTER argues that as set forth fully in her Statement of the Case she has been substantially and adversely affected by the Orders of Malcolm M. Lucas and Manuel Real in failing to grant her application to disqualify the district court, Respondent REAL, who was

slipped onto her cause in a very brusque and unorthodox manner and who purportedly without any notice being furnished to Petitioner held a status conference on PFISTER's subject litigation. Not only did Petitioner believe that the U. S. District Judge Warren J. Ferguson who had handled the subject litigation from the onset in 1978 to April 1981 intend to have the subject litigation proceed to trial on the merits, but Petitioner was also under the belief that the aforementioned district court had denied Respondents, Real-Parties-In-Interest, Motion to Dismiss her Third Amended. But for PFISTER's own diligence and that of her counsel, she would never had learned of any status conference, nor for that matter, any hearing on the motions to dismiss which had already been disposed of by Judge Ferguson.

Disconcerted by the lack of notice furnished by Respondent District Court REAL (there being none), PFISTER upon learning of the assignment of her cause to REAL and prior to any appearance before him sought his immediate recusal. While this challenge would have been unquestionably efficacious under the State of California Code of Civil Procedure Sec. 170.6, Malcolm M. Lucas, Judge of District Court, to whom Respondent REAL transmitted Petitioner's application reckoned that PFISTER's preemptory challenge was insufficient.

Unfortunately, the district court after PFISTER's preemptory challenge abruptly and without any reasons advanced in the form of a memorandum or opinion ordered that PFISTER's complaint be forthwith dismissed.

PFISTER also requests this Court's intervention to investigate, supervise, and otherwise cure actions of the court of appeals respecting its failure to accord PFISTER's testimony at the time of oral hearing any deference, particularly her

testimony concerning when she discovered the causes of action forming the basis of her Complaint and other evidence of gross UNION misconduct in the discharge of its duty of fair representation in having improperly handled PFISTER's grievance.

To further compound this injury, Petitioner was also denied the right to have her legal counsel to represent her before the U. S. Court of Appeals for the Ninth Circuit. As significantly, PFISTER was denied the right to a short continuance to secure additional counsel to advocate her cause on appeal.

All of this, together with the other aforementioned procedural irregularities summates to a gross departure from accepted judicial proceedings as to require this Court's immediate intervention.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays this Court issue Writs of Certiorari to the U. S. Court of Appeals for the Ninth Circuit directing them to vacate the subject Orders entered January 5, 1983 and May 16, 1983 affirming the

dismissal of Petitioner's Third Amended Complaint. Petitioner further and alternatively prays that writs of prohibition, mandamus, and the like, or one or more of said writs as this Court deems proper issue to the U. S. District Court for the Central District of California, sitting as Respondent MANUEL REAL to vacate its Orders of Dismissal filed June 10, 1981, and to otherwise have Petitioner's cause reassigned to a successor district court free from any bias or prejudice against PFISTER or in favor of any Respondent herein with further instructions that PFISTER's Third Amended Complaint be reinstated in each and every cause of action, and that the cause be litigated before a trial by jury as demanded by Petitioner in her Complaint.

Petitioner further prays that this Court issue Writs of Mandamus, Prohibition, or the Like to the U. S. Court of Appeals for the Ninth Circuit commanding said circuit to cause a full and complete investigation into the facts and circumstances

surrounding the destruction of the tapes of oral proceedings held before the court on November 4, 1982, and the orders of the Court of Appeals preventing PFISTER from being represented by her undersigned counsel-of-record at the time of oral hearing; and for such further and additional relief, including attorneys fees, expenses, costs and the like as this Court deems necessary and proper in light of these circumstances.

DATED: July 29, 1983

Respectfully submitted:

BY: _____
EUGENE J. CARELLA, ESQ.

Counsel for Petitioner
PAULA E. PFISTER

P. O. Box 67292
Century City Sta.
Los Angeles, CA 90067-0292
213/553-3721

CERTIFICATE OF COUNSEL

I, Eugene J. Carella, Esq., counsel for above-named petitioner and member in good standing of this court, do hereby certify that the within Petition for Writ of Certiorari and/or Petition for Writs of Mandamus, Prohibition or the Like directed to the U. S. District Court for the Central District of California and U. S. Court of Appeals for the Ninth Circuit designated herein is presented in good faith to fully ensure and protect the cause and rights of Petitioner, and not filed for purpose of delay.

EUGENE J. CARELLA, ESQ.

P. O. Box 67292
Century City Sta.
Los Angeles, CA 90067-0292

v.

CERTIFICATE OF SERVICE

I, Eugene J. Carella, Esq., do hereby certify that on this the_____day of August 1983 I duly served a true copy of the within document seeking a petition for writ of certiorari or in the alternative writs of prohibition, mandamus, and the like, on all parties of record and all respondents named herein as follows:

Brill & Hunt
3055 Wilshire Blvd.
Suite 1000
Los Angeles, CA 90010

Fogel, Rothschild, Reinhardt,
Ostrov and Feldman
5900 Wilshire Blvd., #2600
Los Angeles, CA 90036

Manuel Real, Judge
U. S. District Court
312 No. Spring St.
Los Angeles, CA 90012

Judges, U. S. Court of Appeals
for the Ninth Circuit
7th & Mission St., Box 547
San Francisco, CA 94101

EUGENE J. CARELLA, ESQ.

Office - Supreme Court, U.S.
FILED
AUG 2 1983
ALEXANDER L. STEVAS

IN THE 83-167

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO:

PAULA E. PFISTER,

Petitioner

v.

AMERICAN AIRLINES, INC., a Corporation,

and

BARBARA BAUER (Stewardess Supervisor and Employee of AMERICAN AIRLINES, INC.)

IRVING CURHAN (Director of Flight Service and Employee of AMERICAN AIRLINES, INC.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION,

TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

HONORABLE MANUEL REAL, JUDGE OF THE U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND/OR PETITION FOR WRITS OF MANDAMUS/PROHIBITION OR THE LIKE DIRECTED TO SAID COURT OF APPEALS AND U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

- APPENDIX -

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- INDICES TO APPENDIX -

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Order of District Judge Manuel Real Dismissing Petitioner's Third Amended Complaint Entered June 10, 1981 — A

APPENDIX B

Order Denying Motion to Disqualify Manuel Real, filed by Malcolm M. Lucas Filed June 8, 1982 — B

APPENDIX C

Memorandum Opinion of Circuit Judges Hug, Boochever and Goodwin filed January 5, 1983 affirming Order of Dismissal of District Court — C

APPENDIX D

Order of Circuit Judges Hug, Boochever and Goodwin Denying Petitioner's Petition for Rehearing and Suggestion for Rehearing, en banc, Filed May 16, 1983 — D

APPENDIX E

Order Granting Petitioner's Stay of Mandate Filed June 10, 1983 by Circuit Judge Proctor Hug, Jr. — E

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Order Granting Petitioner Further Stay of Mandate Filed by Circuit Judges Hug, Boochever and Goodwin Filed June 23, 1983 — F

APPENDIX G

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APPENDIX H

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APPENDIX I

Petitioner's Motion for Emergency Continuance — I

APPENDIX J

Order of Court of Appeals Denying Petitioner's Motion for Continuance — J

APPENDIX K

Appellant's Motion to Strike Appellees Designation of Clerk's Record for Fraud Filed Sept. 25, 1982 — K

APPENDIX L

Order Directing Petitioner's Motion to Strike to Merits Panel — L

APPENDIX M — Page

Letter of Petitioner dated May 22, 1983 Requesting Transcript of Proceedings Held Nov. 4, 1982 at oral hearing before Appellate Panel — M

APPENDIX N

Letter from Clerk's office, U.S. Court of Appeals Advising Petitioner of Existence of Tapes Dated June 7, 1983 — N

APPENDIX O

Letter from Clerk of U. S. Court of Appeals, Deborah Mayfield, dated June 9, 1983 Advising Petitioner that Tapes were Missing and Efforts Being Made to Locate Same — O

APPENDIX P

Letter Dated June 17, 1983 from Petitioner Pfister to Clerk Mayfield Re: Tape Transcript of Oral Hearing — P

APPENDIX Q

Letter from Winifred Taylor, St. Deputy Clerk, U. S. Court of Appeals, stating that tapes had been "erased" dated June 20, 1983 — Q

APPENDIX R — Page

Letter from Winifred Taylor, Sr. Clerk, U. S. Court of Appeals dated June 15, 1983 Advising that Tapes were Destroyed — R

APPENDIX S

Letter of Petitioner Pfister to Clerk Dated June 25, 1983 Expressing Shock and Distress that Tape Evidence of Oral Hearing was destroyed — S

APPENDIX T

Petitioner Pfister's Third Amended Complaint Filed March 3, 1981 — T

FILED June 9, 1981

- APPENDIX A -

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER, Plaintiff, vs. AMERICAN AIRLINES, INC., a Corporation, et al., Defendants.	CIVIL ACTION NO. 78 4216R(Gx) ORDER OF DISMISSAL ENTERED JUN 10, 1981

The Motions of defendants, AMERICAN AIRLINES, INC. and AIRLINE STEWARD AND STEWARDESSES ASSOCIATION, TRANSPORTATION WORKER'S UNION LOCAL 550/552, AFL-CIO, for an Order Dismissing plaintiff, PAULA E. PFISTER's, Third Amended Complaint were heard on June 8, 1981, by the Honorable Manuel L. Real, District Judge presiding.

The Court, having considered the moving and opposition papers, as well as oral argument, grants defendants' Motions on the following grounds:

1. Plaintiff has failed to apply for leave to file her Third Amended Complaint.

2. Plaintiff's action is barred by the applicable Statute of Limitations.

3. Plaintiff's allegations fail to set forth any facts sufficient to toll the applicable Statute of Limitations.

4. (handwritten in) Plaintiff's allegations fail to state a claim under Federal law.

IT IS THEREFORE ORDERED that plaintiff's Third Amended Complaint be dismissed without leave to amend.

DATED: JUN 9 1981

MANUEL L. REAL (stamped)

MANUEL L. REAL, UNITED STATES
District Judge

- APPENDIX B -

FILED JUN 8, 1981

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER, Plaintiff, v. AMERICAN AIRLINES, INC., etc., et al., Defendants.	)	No. CV78-4216-R ORDER DENYING MOTION TO DISQUALIFY DISTRICT COURT

Plaintiff's motion to disqualify the Honorable Manuel Real was filed on June 8, 1981. The Court, the Honorable Malcolm M. Lucas, District Judge, presiding, has carefully considered the motion papers and accompanying affidavits filed by plaintiff. The Court denies the motion to disqualify, on the grounds that plaintiff has not demonstrated that Judge Real has any personal bias or prejudice against or for any party to the suit.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve by United States mail, copies of this Order on counsel for the plaintiff and for the defendants in this matter.

Dated: June 8, 1981

MALCOLM M. LUCAS
Malcolm M. Lucas
United States District Judge

- APPENDIX C -

FILED JAN 5 1983

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAULA E. PFISTER,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.; IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.; AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/522, AFL-CIO.

Defendants-Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

MEMORANDUM

Appeal from the United States District Court
For the Central District of California
The Honorable Manuel L. Real, Presiding
Argued and Submitted November 4, 1982

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges.

Pfister appeals the district court's dismissal of her third amended complaint without leave to amend. She asserts that (1) Judge Lucas abused his discretion by failing to grant her motion to have Judge Real removed from the case; and (2) Judge Real subsequently erred in dismissing her third amended complaint, which she alleges was both substantively sufficient and appropriately filed. We

Pfister argues first that Judge Real's dismissal of her third amended complaint has no legal effect because Judge Lucas erred in failing to grant her motion to have Judge Real replaced. To successfully challenge a judge for bias, a party must file a legally sufficient affidavit indicating that "the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. Sec. 144. The affidavit is not legally sufficient "unless it specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source." United States v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980). Pfister's affidavit contends only that Judge Real "sua sponte ordered a status conference and hearing on Defendant's motions to dismiss for June 8, 1981, with only a few days' notice." This allegation affords no indication of extrajudicial bias or prejudice, and we therefore uphold Judge Lucas's denial of Pfister's section 144 motion.

Pfister next contends that Judge Real erred in dismissing her third amended complaint. The major justification for the dismissal of Pfister's third amended complaint was that it failed to allege federal question jurisdiction and a claim for relief arising under federal law which would not be barred by the applicable statute of limitation.

We agree that this action was not timely filed. Wrongful discharge claims brought under the Railway Labor Act constitute federal actions, but their timeliness is governed by the appropriate state statute of limitations. Price v. Southern Pacific Transp. Co., 586 F.2d 750, 752 (9th Cir. 1978). As Pfister concedes, Cal. Civ. Proc. Code Sec. 338, which creates a three-year statute of limitations, is applicable here. See id. at 753 (Sec. 338 applied in similar case in which plaintiff resided and was employed in California, and all pertinent events took place there). Pfister did not file her claim until nearly eight years after her discharge and six years after the union's action in settling the grievance.

Pfister argues that the statute was tolled by the appellees' fraudulent concealment of material facts. Under California law, the existence of such fraudulent concealment, if properly established, causes the applicable statute of limitations to be tolled. Baker v. Beech Aircraft Corp., 39 Cal. App. 3d 315, 321 (1974). However, "the existence of such fraud must be alleged clearly and unequivocally, and must not rest upon inferences." Id.

The allegations of Pfister's complaint would indicate that Pfister may have had a claim for relief in 1972, but they do not indicate that this possible claim was fraudulently concealed from her so as to toll the applicable statute of limitations. This was the third attempt to amend the complaint to state a claim under federal law. There is no indication that there are facts justifying a fourth amendment. It was not an abuse of discretion to dismiss the complaint without further leave to amend.

AFFIRMED.

- APPENDIX D -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED MAY 16 1983

PAULA E. PFISTER, Plaintiff-Appellant, v. AMERICAN AIRLINES, INC., a corporation, et al., Defendants-Appellees.	No. 81-5550 D.C. No. CV 78-4216-R ORDER

Appeal from the United States District Court for the Central District of California

BEFORE: GOODWIN, HUG, and BOOCHEVER, Circuit Judges

The panel, as constituted in the above case, unanimously voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

There has been no pleading of specific acts of fraud in inducing petitioner to enter into an agreement. At oral argument, petitioner appeared to claim that American Airlines had not abided by that agreement. By our affirmance of the dismissal of the federal action, we do not infer one way or the other whether petitioner may have the basis for an action for breach of the settlement agreement.

The full court was advised of the suggestion for an en banc hearing, and no judge of the court requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

- APPENDIX E -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUN 10 1983

PAULA E. FFISTER,

Plaintiff/Appellant

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of American Airlines, Inc.; et al.

Defendants/Appellees.

No. 81-5550

DC# CV 78-4216-MLR

ORDER ON MOTION FOR STAY OF MANDATE
(Rule 41 (b) Fed. R.App.P.)

Upon due consideration of appellant's (FISTER) motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed in the Clerk's office of the Supreme Court of the United States on or before June 16, 1983

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby GRANTED .+

PROCTOR HUG, JR.
United States Circuit Judge

+ In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

- APPENDIX P -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUN 23 1983

PAULA E. PFISTER,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.; IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.; AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

Defendants-Appellees.

No. 81-5550

DC# CV 78-4216-R Central California

O R D E R

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges

Appellant's motion for a further stay of the mandate is granted. The mandate is stayed pending filing of a petition for certiorari in the Supreme Court on or before July 30, 1983.

BY ORDER OF THE COURT:
Phillip B. Winberry
Clerk of Court

by: (signatured)
PATRICK FISHER
Deputy Clerk

- APPENDIX G -

STATUTES INVOLVED:

California Code of Civil Procedure Sec. 338(1)(4)

" Sec. 338. Three years; statutory liability; exception; trespass of injury to realty; taking, detaining or injuring goods or chattels; fraud or mistake; bond of public official; notary public; slander of title; false advertising; water quality and hazardous wastes.

Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture ...

4. An action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

CPLR of New York, Section 213

"Sec. 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud.

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law . . .

8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it."

- APPENDIX H -

CONSTITUTIONAL PROVISION:

AMENDMENT V -- United States Constitution

" No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

- APPENDIX I -

October 25, 1982

CLERK, U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
7th & Mission Streets
San Francisco, California 94101

Re: EMERGENCY CONTINUANCE
Pfister vs. American Airlines, Inc., et al.
D.C. No: CV 78-4216
Appeal No: 81-5550.

Dear Clerk:

Enclosed please find my Emergency Motion for Continuance; Declaration of Appellant Paula E. Pfister.

I am informed that a Merits Panel has not yet been appointed on my cause and am requesting that this document be forthwith presented to the Court for immediate disposition and attention since I am without counsel to assist me at this time.

Thank you for your prompt attention to this most important matter.

Very truly yours,

Paula E. Pfister
Appellant.

cc: Files (6)

ENCLOSURE: Motion for Emergency Continuance;
Declaration of Paula E. Pfister.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA E. PFISTER, Plaintiff/Appellant, vs. AMERICAN AIRLINES, INC., et al., Defendants/Appellees.	) C.A. No: 81-5550) D.C. No: CV 78-4216-F and R)) EMERGENCY MOTION FOR CONTINUANCE; DECLARATION OF APPELLANT PAULA E. PFISTER.)

COMES NOW Appellant, PAULA E. PFISTER, in her own behalf, pursuant to the Federal Rules of Appellate Procedure and Local Rules of this Court, and does respectfully pray that an Order issue Continuing the Oral Hearing on the subject Appeal denominated hereinabove, scheduled for oral hearing on November 4, 1982 for a period of Twenty (20) days, up to and including the 24th day of November 1982.

In support of said Motion, Appellant respectfully shows the following Declaration attached herewith as EXHIBIT "A".

WHEREFORE, Appellant respectfully prays that an Order issue continuing the subject Oral Hearing until a period of Twenty (20) days, up to and including November 24, 1982, and for such further and alternative relief the Court may deem necessary in light of the circumstances.

Appellant specifically demands an Oral Hearing on the instant Appeal and states that said oral argument is essential to the proper adjudication of her rights before this Court.

DATED: October 25, 1982

Respectfully submitted:

BY: Paula E. Pfister

PAULA E. PFISTER
Appellant.

P. O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

DECLARATION OF PAULA E. PFISTER

I, the undersigned, declare and state as follows:

1. That I am the plaintiff in Case No: CV 78-4216 and the appellant in the instant Appeal No: 81-5550.

2. That my rights have been substantially impaired and offended by this Court's actions in denying me the right to be represented by counsel of my choice.

3. That various papers and motions, and the like, filed by me and my counsel were summarily rejected, thereby causing me further harm and injury.

4. That I have been seeking to secure additional counsel in light of the refusal of this Court to allow Mr. Eugene Carella to represent my interest on appeal.

5. That Attorney Carella is well-conversant with all the facts, law and circumstances surrounding the instant litigation and appeal.

6. That at the present time I have been unable to obtain appellate counsel, but am confident that I will secure same within the next fourteen (14) days.

7. That it is imperative and essential to my cause that I be afforded oral hearing on the substance and merits of my Appeal.

8. That I am being prejudiced by being compelled by this Court to proceed on my own behalf and by having my counsel willfully denied access on my behalf.

9. That a Merits Panel for the subject Appeal has not yet been appointed or announced as of this date.

10. That no prejudice or harm can come to any of the Appellees by granting the subject Continuance to enable me to secure additional counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25th day of October 1982 in Los Angeles, California.

Paula E. Pfister

PAULA E. PFISTER

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I served a true copy of the within Motion for Emergency Continuance; Declaration of Paula E. Pfister on all parties of record on this the_____day of October 1982 by first class mail, postage-prepaid, in Los Angeles, California, on the following:

Brill & Hunt
1000 Wilshire Centre Building
3055 Wilshire Boulevard
Los Angeles, California 90010

James L. Marable
Fogel, Julber, Reinhardt, Rothschild
& Feldman
5900 Wilshire Boulevard
Suite 2600
Los Angeles, California 90036

Paula E. Pfister

- APPENDIX J -

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 28 1982

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

PAULA E. PFISTER,

Plaintiff and Appellant,

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, Inc., et al.,

Defendants and Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

ORDER

Upon due consideration, the Court makes the following orders:

(1) Appellant's emergency motion for continuance of oral argument is denied;

(2) The appeal will remain on calendar for Thursday, November 4, 1982, in Los Angeles; and

(3) Appellant may appear at oral argument pro se, or she may submit on the briefs.

FOR THE COURT:

PHILLIP B. WINBERRY
Clerk of Court

Roger T. Ritter

By: Roger T. Ritter
Senior Deputy Clerk

- APPENDIX K -

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA E. PFISTER, Plaintiff-Appellant, vs. AMERICAN AIRLINES, INC., et al., Defendant-Appellees.	)	C.A. No: 81-5550 D.C. No: CV 78-4216-R APPELLANT'S MOTION TO STRIKE APPELLEES' DESIGNATION OF CLERK'S RECORD FOR FRAUD; AND IMPOSITION OF SANCTIONS.

COMES NOW Appellant, PAULA E. PFISTER, pursuant to the Federal Rules of Appellate Procedure, and does respectfully pray an Order issue from this Court striking Appellees' AMERICAN AIRLINES, INC, et al. and AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION, LOCAL 550/552, AFL-CIO's Designation of Clerk's Record for Fraud and because of the untimeliness of said Designation filed on September 22, 1982. In support of said Motion, Appellant respectfully shows the Court as follows:

1. That Appellees have demonstrated continuing willfulness and contempt for the Rules of this Court and Federal Rules of Appellate Procedure in the processing of this Appeal.

2. That although Appellees solicited extensions of time to file their brief -- and, in particular, Appellee UNION -- said Appellee UNION did not timely file a brief.

3. That said Appellee UNION filed a purported Adoption of Appellee AMERICAN's brief approximately three (3) weeks after they were to file same and after Appellant PFISTER filed her Notice of Non-Receipt of Appellee's brief.

4. That Appellee's Brief was also deficient in not having complied with Local Rule 13(e) regarding a Certificate of Interested Parties.

5. That again, Appellant PFISTER on August 23, 1982 -- three (3) weeks after said Certificate of Interested Parties was required to be filed by Appellees -- had to move this Court to Compel Appellees to Comply with the proper local rules of court or to Strike said Brief.

6. That the final straw is the latest attempt by Appellees AMERICAN AIRLINES, INC., et al. and UNION to cure gross deficiencies in the discharge of their responsibilities by seeking to now file a designation of clerk's record -- two (2) months after it should have been properly filed with the Clerk of the District Court.

7. It is further stated that Appellant PFISTER has performed all of her responsibilities in this regard properly on May 28, 1982.

8. That not only is said Appellees' Designation of Clerk's Record two (2) months tardy, but it contains material

and fabricated designations which did not exist in the Clerk's Record and are the product of fraud and fabrication perpetrated by Appellees -- and, in specific, Appellant states that at no time did she ever receive a purported 'minute order' identified as Document No. 41 or a purported 'minute order' filed on June 1, 1981 identified as Document No. 43.

9. That Appellant respectfully shows this Court that said purported Orders are spurious and further calculated and designed to mislead and misrepresent to this Court the true nature of what occurred.

10. That Appellant also moved this Court for an Order to Cure material alterations in the Reporters' Transcripts which was denied, notwithstanding that said relief is available in this Court, and said Motion to Cure was UNOPPOSED by any of the Appellees and thereby deemed admitted.

11. That Appellant specifically states that neither she nor her legal counsel at any point in time ever received any copy of Document No. 41 or Document No. 43.

12. That Appellant specifically states that on September 24, 1982 the Clerk of the U. S. District Court, Appellate Department, informed said Appellant that said Document identified as No. 41 in Appellees' Designation was 'missing' from the Record and that she could not explain where it was or if it even existed.

13. That this Court should not abide such blatant and gross abuses of the appellate processes by said Appellees and should strike said Designation of the Clerk's Record by Appellees and further must impose sanctions upon said Appellees for continuing and willful abuses of these appellate proceedings.

14. That this concerted action by Appellees be ordered to stop and that the merits of the within proceedings be addressed according to law.

WHEREFORE, on the basis of the foregoing premises, Appellant respectfully prays an Order issue from this Court Striking Appellees' Designation of Clerk's Record for Fraud and to otherwise impose sanctions upon Appellees for their continuing and willful disregard for the Rules of this Court and Federal Rules of Appellate Procedure and for their participation in seeking to thwart the appellate processes; and for such further relief this Court deems necessary in light of these circumstances.

DATED: September 25, 1982

Respectfully submitted:

BY: Paula E. Pfister

PAULA E. PFISTER, Appellant
P. O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Appellant's Motion to Strike Appellees' Designation of Clerk's Record for Fraud; and Imposition of Sanctions on all parties of record by first class mail, postage-prepaid, on this the_____day of September 1982 in Los Angeles, California, on the following:

Brill, Hunt & Debuys
Suite 1000 Wilshire Centre Building
3055 Wilshire Boulevard
Los Angeles, California 90010

Fogel, Julber, Reinhardt, Rothschild
& Feldman
5900 Wilshire Boulevard, Suite 2600
Los Angeles, California 90036

Paula E. Pfister

APPENDIX L

FILED

OCT 28 1982

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAULA E. PFISTER,

Plaintiff and Appellant,

vs.

AMERICAN AIRLINES, INC., a corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, Inc., et al.,

Defendants and Appellees.

No. 81-5550

D.C. No. CV 78-4216-R

ORDER

Upon due consideration, the Court makes the following orders:

(1) Appellant's emergency motion for continuance of oral argument is denied;

(2) The appeal will remain on calendar for Thursday, November 4, 1982, in Los Angeles; and

(3) Appellant may appear at oral argument pro se, or she may submit on the briefs.

FOR THE COURT:

PHILLIP B. WINBERRY
Clerk of Court

Roger T. Ritter

By: Roger T. Ritter
Senior Deputy Clerk

- APPENDIX M -

May 22, 1983

Clerk, U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
Seventh & Mission Streets
San Francisco, California 94101

Re: Paula E. Pfister vs. American Airlines, Inc., Et Al.
APPEAL NO: 81-5550 (TRANSCRIPTS)

Dear Clerk:

I am respectfully requesting a Transcript of the Oral Hearing held on the above-stated Appeal before Circuit Judges Boochever, Hug and Goodwin on November 4, 1982, held in Los Angeles, California, where I was forced to appear on my own behalf, and that it be prepared by the appropriate court reporter and made available to me and made a part of the Record on Appeal in the instant matter, inasmuch as I will be filing writs with the U. S. Supreme Court relating to the subject Appeal as soon as I am able to obtain additional legal counsel.

Kindly advise me at once as to the cost associated with the transcripts and expedite this request at your earliest convenience.

Very truly yours,

PAULA E. PFISTER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067-0382

APPELLANT.

cc: Files (7)
RC

- APPENDIX N -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Phillip B. Winberry
Clerk of Court

(415) 556-7340

June 7, 1983

11-4-82
81-5

Ms. Paula E. Pfister
P.O. Box 67382
Century City Station
Los Angeles, CA 90067-0382

Dear Ms. Pfister,

This reply is in response to your letter dated May 22, 1983.

No transcripts are made of oral arguments. Arguments are tape-recorded for the use of the Court and do not represent an official record of the proceedings.

Members of the public may, after adequate advance request, have a stenographer prepare a written transcript from the tape and/or listen in the Clerk's office to these recordings.

Tapes are destroyed after the Court's final judgment has been entered. Judgment in your case issued on January 5, 1983.

Information regarding the tapes of your case can be obtained by contacting our Los Angeles office at (213) 688-3635 or you can write them at:

U.S. Court of Appeals
Office of the Clerk
1699 U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Very truly yours,

Patrick Fisher
Deputy Clerk

by:

James Marshall
Law Student Assistant

- APPENDIX O -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 9, 1983

Ms. Paula E. Pfister
Post Office Box 67382
Century City Station
Los Angeles, California 90067-0382

Dear Ms. Pfister:

This letter is being written in response to your request for the tape of your oral argument which took place on November 4, 1982. The tape isn't in our office at this time and efforts are being made to locate it. Once, the tape has been forwarded to our office you will be contacted immediately.

We regret the error and hope that it hasn't inconvenienced you in any way.

Very truly yours,

Debra Mayfield

Debra Mayfield
Deputy Clerk

- APPENDIX P -

June 17, 1983

Ms. Deborah Mayfield
CLERK'S OFFICE
U. S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
312 North Spring St.
Los Angeles, California 90012

Attention: Winifred Taylor, Sr. Clerk

Re: Pfister vs. American Airlines, Inc.
Et Al.
APPEAL NO: 81-5550 (TRANSCRIPTS)

Dear Ms. Mayfield:

On June 9, 1983 I personally visited your offices at the Court House to listen to the tapes of the Oral Argument held on November 4, 1982 and to have a stenographer transcribe same. This was done immediately after I received a letter from the Office of the Clerk stating that I could do so, which was in response to my letter of request for the subject transcripts. When I came to your office on June 9, 1983 you informed me that the tapes were "missing" and that after a few phone calls you implied that one of the judges were in possession of the tapes and that I was to call you in one (1) week to secure same after you retrieved them.

Please inform me at once by letter as to the whereabouts of these tapes and whether you have them now in your possession since noone signed these tapes out. As you know, this is actual evidence, since I was forced to appear on my own behalf to present oral argument and my attorney was taken off my case leaving me on my own and I was not granted a continuance to secure additional counsel. Therefore, at no point in time, should these tapes disappear or go anywhere and must remain a permanent part of the Record. No mandate has issued in this case. As you know, a mandate does not issue for 21 days and I filed a Petition for Rehearing in fourteen (14) days thereby staying the mandate in this case.

I will look forward to hearing from you at your earliest convenience. I am taking this up on a Writ to the Supreme Court and need these transcripts for my presentation, so time is of the essence that you secure these. It is absolutely necessary that I be afforded these tapes so I can prepare this writ.

Neither you nor Ms. Winifred Taylor, your superior, indicated that there was any problem in securing same.

Thank you for your prompt and immediate attention to this most important matter.

Very truly yours,

/s/

PAULA E. PFISTER

APPELLANT-PETITIONER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067-0382

cc: Files (4)
RC

NOTE: The judges based their decision on the Rehearing Petition mentioning the oral argument, which decision came down in the middle of May 1983.

- APPENDIX Q -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 20, 1983

Miss Paula Pfister
Post Office Box 67382
Century City Station
Los Angeles, California 90067-0382

Re: No. 81-5550 Pfister v. American Airlines, Inc.

Dear Miss Pfister:

We have your letter of June 17, 1983, inquiring about the tape of the oral argument in the above-entitled case.

We wrote to Mr. Carella last Wednesday advising him that the tapes have been erased.

We are enclosing herewith copies of pages 27 and 28 of the Ninth Circuit Internal Operating Procedures. As you will see, tapes are destroyed after the final judgment has been entered. The final judgment was issued in your case on January 5, 1983, so it is entirely appropriate that the tape has been erased.

We regret the inconvenience this has caused you.

Yours very truly,

PHILLIP B. WINBERRY
Clerk of Court

By: Winifred D. Taylor
Senior Deputy Clerk

- APPENDIX R -

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

Los Angeles Office:
Room 1009
United States Courthouse
312 North Spring Street
Los Angeles, California 90012

June 15, 1983

Eugene J. Carella, Esq.
Post Office Box 67292
Century City Station
Los Angeles, California 90067-0292

Re: No. 81-5550 Paula Pfister v. American Airlines

Dear Mr. Carella:

The tape of the oral argument in the above-entitled case has been erased.

These tapes are made for the use of the judges of the court and once an opinion has come down they are not too likely to need the tapes. However, as a precaution we do retain them until the mandates issue.

Periodically we receive a list of cases in which the mandates have issued. Such a list indicated that the mandate in this case had issued on January 19, 1983, and we, therefore, erased the tape. The mandate must have been subsequently withdrawn, as we were given the information over the telephone that it had not issued as a petition is pending. We, naturally, did not question the information we received from the computer and erased the tape prior to last week.

Yours very truly,

PHILLIP B. WINBERRY
Clerk of Court

Winifred D. Taylor

By: Winifred D. Taylor
Senior Deputy Clerk

- APPENDIX S -

June 25, 1983

Phillip B. Winberry
Clerk of Court
Office of the Clerk
U. S. Court of Appeals
for the Ninth Circuit
7th & Mission Streets
San Francisco, California 94101

Attention: Winifred D. Taylor
Senior Deputy Clerk

Re: PFISTER VS. AMERICAN AIRLINES, INC., ET AL.
APPEAL NO: 81-5550

Dear Mr. Winberry:

This letter is in response to your June 20, 1983 letter to me, the Appellant, in the above-named case.

I am appalled and outraged that I was not afforded any notice of your "erasing" evidence and my tapes requested of your office and which tapes and were represented to me by yourself and your office as being available in May 1983. Also, the panel themselves refer to the oral argument in their May Order and had these transcripts readily available at that time. I was forced to proceed "IN PRO PER" in this matter, as you are well aware, and Mr. Carella was not on this case and was, in fact, illegally, improperly, and unethically removed to prevent me from having representation in this matter. I was denied a short continuance to obtain new and additional counsel for my oral argument and my cause. These tapes demonstrate beyond cavil that the evidenced adduced at the time of oral argument by me and in response to questioning by the Panel that the discovery of these causes of actions did not take place "until approximately 1978" and is direct evidence presented by me as the plaintiff-appellant. The defense counsel provided no input or adequate response to my allegations and were "wanting", to say the least.

I have been defrauded in this case and harmed substantially by the events that have been taking place and feel that there is a serious obstruction of justice being perpetrated by various members of the Court and your Office, which is irreparable and continuing and outside the scope of law and am astonished that this type of conduct can take place here in our country and with your participation in this obstruction and destruction of material evidence.

Your attempt to make this sound like a normal, everyday occurrence does not take too well and has caused me a great deal of distress and sickness.

If this is not corrected forthwith I am commending this entire matter for investigation by various individuals who oversight this type of over-reaching and abuse.

Thank you for your attention to this matter.

Very truly yours,

PAULA E. PFISTER

APPELLANT - IN PRO PER

P. O. Box 67382
Century City Sta.
Los Angeles, CA 90067

cc: Files (4)
RC

P. S. I am sure that Ms. Winifred Taylor would have known that these tapes were purportedly 'erased' when I was down at her office personally on June 9, 1983 to listen to them and have them transcribed. They indicated to the contrary and only indicated that they were "missing".

cc: Ms. Winifred D. Taylor
OFFICE OF THE CLERK
U. S. Courthouse
312 No. Spring Street
Los Angeles, CA 90012

- APPENDIX T -

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City Station
Los Angeles, California 90067

(213) 822-8428

FILED
On Demand
MAR 3 1981
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., a Corporation,

vs.

BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.

vs.

IRVING CURHAN, Director of Flight Service/Employee of AMERICAN AIRLINES, INC.

vs.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO.

Defendants.

CIVIL ACTION NO. 78 4216 F(Gx)

THIRD AMENDED COMPLAINT TO RECOVER DAMAGES FOR BREACH OF THE COLLECTIVE BARGAINING AGREEMENT; INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AND MENTAL ANXIETY; FRAUD, MISREPRESENTATION AND DECEIT; TORTIOUS INTERFERENCE WITH A FIDUCIARY RELATIONSHIP; BREACH OF THE DUTY OF FAIR REPRESENTATION AND THE FIDUCIARY DUTY TO ACT IN GOOD FAITH; AND INTERFERENCE WITH AN ADVANTAGEOUS RELATIONSHIP AND PROSPECTIVE ADVANTAGE; WILLFUL BREACH OF STATUTORY BILL OF RIGHTS.

THIRD AMENDED COMPLAINT

COMES NOW, the Plaintiff, PAULA E. PFISTER, by counsel-of-record, and, in support of her Third Amended Complaint against each of the Defendants named herein, states and alleges as follows:

COUNT I

1. The Plaintiff is and at all material times mentioned herein has been a citizen and domiciliary of the County of Los Angeles and the State of California.

2. Defendant AMERICAN AIRLINES, INC., is incorporated in the State of New York and maintains its principal place of business in New York City, New York, and transacts business in the State of California and the County of Los Angeles.

3. Defendant BARBARA BAUER is or was at all material times alleged herein a Stewardess Supervisor and Employee of Defendant AMERICAN AIRLINES, INC. and is a citizen and domiciled in the State of California, sworn to by her.

4. Defendant IRVING CURHAN is or was at all material times alleged herein Director of Flight Service and an Employee of Defendant AMERICAN AIRLINES, INC. and is a citizen of the State of New York, and was a citizen and domiciliary of the State of California at the time many of the material transaction which constitute the basis of this lawsuit occurred.

5. Defendant AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO, is and at all material times alleged herein was an unincorporated labor association whose principal offices are found in a state other than California, but who maintained duly authorized officers and/or agents in the State of California, representing the Plaintiff and other Union members like her, at the time of the transactions alleged by the Plaintiff forming the basis

of this lawsuit, and aforesaid Defendant UNION otherwise transacts and/or transacted business in the State of California.

6. This Court's jurisdiction is founded upon 28 USC Sections 1331 and 1337 and is invoked in accordance with the provisions of 45 USC Section 151, et seq., as made applicable by 45 USC Section 181, hereinafter the Railway Labor Act; and 29 USC Section 411, 412.

7. The matter in controversy includes, exclusive of interest and costs, a gross sum of Ten Thousand Dollars ($10,000), and Plaintiff further asserts and invokes this Court's pendant jurisdiction over all appropriate Federal and state causes of action herein alleged.

8. On or about June 1965, the Plaintiff was solicited and recruited by Defendant AMERICAN AIRLINES, INC. (hereinafter AMERICAN) and became employed by AMERICAN as a Flight Attendant.

9. That at or about the same time pursuant to the provisions of the Collective Bargaining Agreement (hereinafter "Agreement") between AMERICAN and the Defendant Local Union 550/552 (hereinafter Defendant "UNION"), Plaintiff was compelled to become a member in aforenamed Defendant UNION as a prerequisite to the discharge of her duties for Defendant AMERICAN.

10. That on or about June 1970 the Plaintiff, possessed of an impressive and dedicated record of flight service for Defendant AMERICAN was improperly, summarily, and with premeditated malice aforethought discharged by the Defendant AMERICAN at the insistance, urgings and approval of Defendants and

thru the agency of the aforesaid Defendants BARBARA BAUER and IRVING CURHAN, hereinafter Defendant BAUER and CURHAN, Plaintiff's Supervisor and Supervisor of Flight Service respectively.

11. Plaintiff alleges said termination was undertaken by aforesaid Defendants CURHAN, BAUER and AMERICAN with vindictiveness and malice and was further motivated by bad faith and without cause and with the intent to injure, annoy and vex the Plaintiff, and to destroy her rights under the Agreement.

12. Defendants, and each of them, at all times material herein, were the Agents and/or Employees of their Co-Defendants and were acting within the scope and authority of aforesaid agency and with the permission, knowledge and approval of the Co-Defendants.

13. That at all times material herein, Plaintiff faithfully and properly performed and discharged all duties required of her by aforenamed Defendants and Agreement.

14. Plaintiff further alleges that pursuant to the appropriate provisions of the Agreement in existence at the time she was terminated, a grievance was timely and properly initiated against aforenamed Defendants AMERICAN, BAUER and CURHAN; and that the Plaintiff otherwise complied fully with the conditions requisite for prosecuting aforesaid grievance.

15. On or about November 1972, as an inducement to the Plaintiff and as a method for inducing the Plaintiff to conclude and otherwise dismiss her grievance and complaint against

Defendant AMERICAN and surrender her rights under the Collective Bargaining Agreement. Defendant AMERICAN apprised the Plaintiff of a settlement proposition, which, if accepted by the Plaintiff, would have deleted all false, disparaging and otherwise damaging information concerning the Plaintiff's improper termination from the Defendant AMERICAN's personnel files still being communicated by AMERICAN and would otherwise permanently expugn said false, defamatory, and scurrilous data. Further, that said false and damaging information would not be transmitted or otherwise imparted to any other third party seeking information from Defendant AMERICAN--including prospective employers--with respect to any of the Plaintiff's work history, employment and personnel record, or the like.

16. The Plaintiff, suffering from substantial economic deprivation caused by the adverse and improper information transmitted by aforesaid Defendant AMERICAN regarding her employment history and improper dismissal, and under further economic pressure and duress because the Defendant UNION had abandoned, in bad faith, her grievance against said Defendant AMERICAN and refused to prosecute aforesaid grievance at the insistence and direction of Defendant AMERICAN--knowing it to be meritorious and in derogation of their duty of fair representation to the Plaintiff--the Plaintiff was forced to acquiesce against her will to the terms of aforesaid settlement proposition advanced by Defendant AMERICAN and to completely surrender and forfeit all her rights contained in aforesaid Agreement.

17. That as a direct and proximate result of the acts

of Defendants alleged herein, the Plaintiff was disenfranchised of all of her rights and remedies under the Collective Bargaining Agreement in existence and was otherwise prevented from carrying forward the prosecution of her claim for reinstatement and back pay as provided for in the Collective Bargaining Agreement.

18. The Plaintiff further alleges that said acts of the Defendants were undertaken with their awareness of her peculiar susceptibility to them, further amplifying the harm and damage sustained by her, intentionally concealed from her.

19. Plaintiff further states that as a direct and proximate cause of the Defendants' actions and knowingly and willfully breaching its Collective Bargaining Agreement, that she has sustained severe and substantial emotional and mental harm and anguish.

WHEREFORE, the Plaintiff respectfully prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For medical and related expenses in an amount to be ascertained and inserted by amendment herein.

3. For loss of collective bargaining rights in an amount of at least One Hundred and Fifty Thousand Dollars ($150,000).

4. For back pay and loss of benefits in an amount to be ascertained and inserted.

5. For exemplary and punitive damages on account of Defendants' willful and vanton breach of the agreement in an amount of Five Hundred Thousand Dollars ($500,000); and

6. For costs of suit and for such other and further relief as the Court may deem appropriate.

COUNT II

1. The Plaintiff realleges each and every allegation contained in Count I as though fully alleged herein in support of Count II. Further, each and every allegation of Count II herein is to be regarded as having been alleged in support of Count I.

2. That Defendant AMERICAN as an active inducement for Plaintiff to accept aforesaid settlement agreement and thereby irrevocably forfeit and waive said rights under the Agreement agreed to communicate only positive information to any inquiry initiated by any third party prospective employer or other, said information justified by the facts of Plaintiff's employment and vas to further remove any statements concerning or relating to Plaintiff's unjustified dismissal by Defendant AMERICAN and to further refrain from its slanderous and damaging conduct of stating that Plaintiff was a "dishonest" employee and an "unworthy employee" and othervise an employment risk.

3. Plaintiff further alleges that Defendant AMERICAN in violation of its aforesaid duty undertaken to her, secured by fraud and duress, have made, and continue to make, inten-

tional, grossly reckless and malicious statements unvarranted concerning the Plaintiff's background, work performance history with aforesaid Defendants--damaging to her personal and business reputation and character and in callous disregard of the Plaintiff's well-being and for the purpose of causing the Plaintiff to suffer humiliation, grief, mental anxiety, and emotional and physical distress.

4. The Plaintiff has advised Defendant AMERICAN that it should refrain from its oppressive, willful and vanton conduct in distributing, and othervise causing to be distributed, false and malicious statements to prospective employers of the Plaintiff, including other major airline carriers, to wit: Trans World Airlines, Continental Airlines, Western Airlines, United Airlines, and the like, but the Defendants refuse--and continue to refuse--to refrain from aforesaid conduct, mindful of the Plaintiff's peculiar susceptibility to their conduct and acts thereby knowingly amplifying and expanding the emotional and mental harm sustained by the Plaintiff--all in conscious disregard of the consequences of their duty to the Plaintiff.

5. Plaintiff further alleges that the aforesaid acts committed by the Defendants are outrageous and substantial in nature, continuing in duration, and have been committed within one (1) year from the date of filing the within Complaint and otherwise, together with the causes of action therein, have been willfully concealed from the Plaintiff by the Defendants' willful and intentional acts preventing their

discovery until one (1) year from the filing of the within Complaint.

6. Plaintiff, by way of specific allegation, avers that the Defendants are bound by the Appeals Board Decision No. 70-5019 and have accepted its findings, identified as Exhibit "B" and attached herevith, indicating that the Plaintiff's dismissal by Defendant AMERICAN was improper and othervise without cause. This notvithstanding, the Defendant AMERICAN has stated to prospective employers that Plaintiff was "a personnel problem"; was never employed by AMERICAN for the five (5) years she was; and was othervise unsuitable for an airline position and is "dishonorable" and "dishonest" and could not be trusted for employment purposes, and other such disparaging statements.

7. As a proximate result of the acts alleged herein, the Plaintiff has sustained substantial and severe personal and professional humiliation, mental torment and anxiety, as well as emotional and physical harm and distress; and has been injured in her mind and body so that she nov suffers and complains of nervous tension, fatigue, irritability, and othervise suffers from said emotional distress which is manifesting itself as a severe and unalterable anxiety neurosis--all to the Plaintiff's general damage and detriment in the amount of Five Hundred Thousand Dollars ($500,000).

8. That as further direct and proximate result of the acts committed by the Defendants as alleged herein, the Plaintiff requires medical attention for the effects of aforesaid Defendants' conduct maliciously undertaken by them with an intent to injure, annoy, vex and harm the Plaintiff in the manner nov experienced by her.

9. As a further direct consequence of the Defendants' aforesaid conduct as stated herein, the Plaintiff was prevented from attending to and carrying forward her customary vocational activities and pursuits as an airline flight attendant and/or flight supervisor, and has sustained loss of earnings thereby in a sum of approximately One Hundred and Twenty Thousand Dollars ($120,000) and has sustained damage to this extent herein.

10. The Plaintiff is informed and believes, and based upon said information, further states that she will continue to be prevented from attending to her former usual occupation in the future if the alleged acts of Defendants are permitted to continue undeterred and unpunished as they exist up and to the present date.

11. The Plaintiff states that the acts of Defendants alleged herein and each of them were willful, wanton, malicious, oppressive and were undertaken to injure, annoy, vex and otherwise harm and irrevocably destroy and damage the Plaintiff's personal and business reputation, as well as her vocational pursuits, and to otherwise cause her suffering and emotional harm entitling the Plaintiff to an award of punitive damages in the sum of Five Hundred Thousand Dollars ($500,000).

WHEREFORE, the Plaintiff respectfully prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For medical and related expenses in an amount to be ascertained and inserted by amendment herein.

3. For loss of earnings based on present and future computations in an amount of at least One Hundred and Fifty Thousand Dollars ($150,000).

4. For exemplary and punitive damages in an amount of Five Hundred Thousand Dollars ($500,000); and

5. For costs of suit and for such other and further relief as the Court may deem appropriate.

COUNT III

1. Each and every allegation averred by the Plaintiff in Counts I and II is realleged in support herein of Count III. Further, each and every allegation of Count III shall be regarded as having been alleged in support of Counts I and II.

2. On or about November 1972 Defendant AMERICAN falsely and fraudulently represented to the Plaintiff pursuant to the terms of their agreement whereby Plaintiff was induced to settle and conclude her claim against Defendant AMERICAN forfeiting all rights under collective bargaining, that said Defendant Employer would reflect and communicate only positive information concerning the Plaintiff's employment history, background, job performance, and other aspects of her employment relationship with Defendant AMERICAN consistent with her excellent personnel record developed by her.

3. Defendants' representations were, in fact, false.

4. When Defendant AMERICAN made said representations that it would disseminate and reflect only positive work experience information concerning Plaintiff's personnel history with Defendant AMERICAN, said representations were made by Defendant AMERICAN with the intent to defraud and deceive the Plaintiff and to induce and influence the Plaintiff to act in the manner alleged herein, not in her best interest, and otherwise causing the Plaintiff to irrevocably forfeit rights available to her under the collective bargaining agreement.

5. At the time Defendant AMERICAN made said representations to the Plaintiff that they would only reflect positive personnel information concerning her employment history with them and they would make no reference to her dismissal, but would indicate that she had left voluntarily of her own choosing due to the improper termination of the Plaintiff from the Defendant's employ, the Defendant AMERICAN had no intention of ever performing or fulfilling said representations to her.

6. The Plaintiff at the time said representations were made by the Defendants was ignorant of the falsity of Defendants representations and believed them, justifiably, to be true; and by justifiably relying upon said representations, Plaintiff was fraudulently induced to and did, in fact, waive and forfeit irrevocably her rights and remedies provided by the collective bargaining provisions governing her cause and otherwise forfeited and relinquished various statutory rights available to her under existing Federal labor statutes affording her a claim of relief and causes of action against the Defendants AMERICAN, BAUER and CURHAN.

7. That if Plaintiff knew and was apprised of the actual facts, she would not have taken the acts and commenced upon the course of conduct she ultimately undertook because her motivation into entering said fraudulent agreement was to eliminate and otherwise erase the harm and stigma caused by Defendants AMERICAN, BAUER and CURHAN's injurious statements concerning her employment suitability and employment history--which effectively prevented her from securing employment in her normal occupation for a period subsequent to her termination.

8. Plaintiff's reliance on Defendant AMERICAN's representations was justified because the Defendant AMERICAN's counsel assured her in writing that said agreement would be respected by Defendant AMERICAN.

9. That as a further proximate result of Defendants' fraud, deceit, and the facts alleged herein by Plaintiff, Plaintiff has forfeited her rights under various provisions of collective bargaining and labor statutes; has sustained a tarnished personnel record, and has been denied employment opportunities in her vocational field, and has suffered and sustained severe and emotional distress and mental suffering and experienced loss of earnings; and has further wasted time, money and energy--all for vain, in an attempt to secure a comparable position with an airline in her vocational field--all to her personal detriment within three (3) years prior to the filing of the within Complaint.

10. Plaintiff further states that the Defendant

UNION knowingly, willfully, and intentionally abandoned her during the final stages of the grievance procedures with the purpose and intent to cause her maximum oppression, fraud, and the like, and with the knowledge that her grievance was meritorious and otherwise acted recklessly and arbitrarily in its refusal to prosecute aforesaid grievance; and that said abandonment was undertaken by the Defendant UNION as an economic weapon to force her to execute and complete the settlement agreement outlined and proposed by the Defendant AMERICAN as previously identified herein.

11. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice, and the like.

12. The Plaintiff further avers that the fraud and deceit practiced by the Defendants--and, in particular, the Defendant UNION--was not discovered by the Plaintiff on a date within three (3) years before the commencement of the within action.

13. The Plaintiff could not in the exercise of due diligence discover the fraud and deceit conferred by the Defendants up until this time because she did not actively or seriously seek re-employment with other airline employers until a period approximately three (3) years from the commencement of the within action; and as a consequence, had no way of knowing the true condition of the records and the false and damaging information communicated, in particular, by Defendant AMERICAN to prospective airline employers and was otherwise thwarted by Defendant AMERICAN who willfully refused

to permit the Plaintiff to examine and reviev her personnel file and employment history to ferret out any abuses or false or disparaging information contained therein.

14. Further, Plaintiff alleges that at all times alleged herein, Defendant UNION was a Fiduciary to the Plaintiff, and so acting under the collective bargaining agreement of appropriate Federal statute, Defendant was in control of and responsible for Plaintiff's well-being and for acting in her exclusive best interest; and Plaintiff relied upon the special representations and statements by the Defendant UNION in discharge of their Fiduciary duties entered into the agreement in question herein, causing her to surrender her causes of action under collective bargaining and the grievance procedures identified therein, and further waiving her rights against Defendant AMERICAN.

15. That said conduct of Defendant UNION was undertaken to serve the interest of both the Defendant UNION and Defendant AMERICAN at the expense of the Plaintiff's best interests and, as such, constitute a breach of the Collective Bargaining Agreement and also of the Defendant UNION's statutory Duty of Fiar Representation.

WHEREFORE, the Plaintiff prays judgement as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For punitive and exemplary damages on account of the willful and vanton acts undertaken by the Defendants with malice intended to cause the Plaintiff to surrender her causes of action against the Defendants under the Collective Bargaining Agreement and other Federal labor statutes in the amount of Five Hundred Thousand Dollars ($500,000); and

4. For costs of suit and for further and additional relief that the Court may deem necessary.

COUNT IV

1. All of the allegations alleged in support of Counts I, II and III are realleged in support of Count IV herein. All of the allegations contained in Count IV are realleged in Counts I, II and III as though fully alleged in support of those counts.

2. On or about November 1972 Defendant AMERICAN in an attempt to cause and induce the Defendant UNION to refrain from exercising and discharging its Fiduciary duties of fair representation oving to the Plaintiff to act in her best interest and to prosecute and press her grievance which was meritorious did knovingly and willfully cause the Defendant UNION to breach its aforesaid duty to deal in good faith with the Plaintiff and to extend her the full-range of the duty of fair representation oved to her by applying fraud, trickery, duress, and other artifice upon the Plaintiff in order that she would surrender her causes of action against the Defendant AMERICAN all to her general detriment and for the exclusive

purpose of serving the interest of the Defendant UNION and Defendant AMERICAN.

3. That as a direct and proximate result of said tortious interference with aforesaid fiduciary relationship as practiced by the Defendant AMERICAN, the Plaintiff was effectively debarred from receiving the benefits and protections engendered in the Collective Bargaining Agreement extending to her and by the concerted action of the Defendant AMERICAN and the Defendant UNION in violating the UNION's statutory duty of fair representation recognized as a duty to deal in good faith under pre-existing common law.

4. That as a proximate and direct result of said tortious interference by Defendant AMERICAN, the Plaintiff has sustained general damages in an amount of Five Hundred Thousand Dollars ($500,000) approximately, as well as physical and emotional distress resulting therefrom, and has lost rights and wages, as well as earnings and the like.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For compensatory and punitive damages on account of the intentional and willful acts of the Defendant AMERICAN in causing said interference with the Defendant UNION's

exercise of its duty of fair representation for the purpose of destroying rights of the Plaintiff protected under the Collective Bargaining Agreement in an amount of Five Hundred Thousand Dollars ($500,000); and

4. For costs of suit and for further additional relief that the Court may deem necessary and appropriate.

COUNT V

1. Plaintiff realleges each and every allegation stated in Counts I, II, III, and IV as though fully alleged in support of Count V herein. Further, all of the allegations in support of Count V are incorporated into Counts I, II, III and IV as though fully alleged in support of those counts as stated herein.

2. The Plaintiff further alleges that the Defendant UNION had a statutory Fiduciary Duty to her known as the duty of fair representation which required that they process her grievance, which was known by them to be meritorious, and that said Defendant UNION not be induced by Defendant AMERICAN, as it is alleged, to compromise the Plaintiff's well-being and interest to have other UNION interests served and fostered.

3. Plaintiff alleges that the Defendant UNION had a duty to represent its membership fairly and even-handedly and to refrain from sacrificing the Plaintiff's interests in order to gain favors from the Defendant Employer with respect to other members of the bargaining unit.

4. The Plaintiff further alleges that the Defendants breached its duty of fair representation and its duty to deal in good faith by deceiving her and abandoning her grievance, knowing that it was meritorious and knowing that by doing so that she would be subject to financial duress and coercion which would cause her to execute a worthless settlement agreement to her detriment and to the Defendant AMERICAN's best interests.

5. Plaintiff further alleges that the Defendant UNION "sacrificed" her cause in derogation of its statutory duty of fair representation with an intention to receive other favors from the Defendant AMERICAN which would redound to the Defendant UNION's benefit at the expense of its membership and at the expense of the Plaintiff's well-being--all in derogation of the Collective Bargaining Agreement.

6. Plaintiff further states that the Defendant UNION breached its duty of fair representation by acting in gross disregard and with reckless indifference to the rights of the Plaintiff and to the obvious validity of her claim and grievance.

7. Plaintiff further states that the Defendant UNION failed to exercise its duty with the good faith and honesty expected of it and that the conduct of the Defendant UNION reflected hostility, discrimination against the Plaintiff and was calculated in bad faith to cause her to forfeit all of her rights under collective bargaining and governing Federal labor statutes.

8. Plaintiff alleges that as a result of the aforesaid conduct by the Defendant UNION, her emotional security and well-being have been damaged and her mental solicitude inextricably linked with the Fiduciary duty owed to her to represent her interests fairly and in good faith and free from discrimination and hostility, has also been destroyed, and that she has sustained emotional and mental distress thereby for which she seeks compensatory damages.

9. That as a further result of the willful, wanton, and intentional breach of its statutory duty of fair representation and good faith or in conscious, gross and reckless disregard of the Plaintiff's rights to be represented fairly, Plaintiff also seeks punitive damages against the Defendant UNION to punish and deter said outrageous acts as it is alleged herein.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in the amount of Five Hundred Thousand Dollars ($500,000).

2. For compensatory damages in the amount of Five Hundred Thousand Dollars ($500,000).

3. For special damages in an amount to be determined herein.

4. For punitive damages on account of the willful and wanton acts undertaken by the Defendant UNION in failing to prosecute the Plaintiff's grievance, abandoning and defrauding her and placing her under duress equal in an amount to Five Hundred Thousand Dollars ($500,000); and

5. For further or additional relief as the Court deems necessary and appropriate.

COUNT VI

1. The Plaintiff realleges every allegation set forth in Counts I, II, III, IV, and V as though fully alleged in support of Count VI herein. Plaintiff further states that all the allegations in support of Count VI are to be regarded as having been alleged in support of Counts I, II, III, IV and V herein.

2. Plaintiff further alleges that Defendant AMERICAN by its knowing and intentional communication of false, erroneous and fraudulent information to third parties--including, but not limited to, prospective airline employers--has caused said prospective employers of Plaintiff to sever and rescind relationships with the Plaintiff, and to further deny the Plaintiff employment opportunities and advantages which--but for the intentional and tortious acts of the Defendant AMERICAN, BAUER and CURHAN--would not have been destroyed and lost by the Plaintiff as she alleges they have been.

3. Plaintiff further states by specific allegation that within one (1) year from the date of the commencement of this action she possessed the background, excellence, skills, expertise, training, appearance, and the like which entitled her to final consideration in numerous airline vocational opportunities.

4. Plaintiff further states that but for the tortious interference with her advantageous relationships, she would

have received substantial opportunities of employment from prospective airline employers.

5. Plaintiff further states that after having been carefully screened by other airline employers and advised that she has met the criteria of final selection, she has on several occasions been denied said employment opportunities after said prospective employers "checked her references with AMERICAN."

6. Plaintiff further states by specific allegation that in the instance of one prospective employer she was denied employment opportunity when a check of her employment history was made with Defendant AMERICAN; and said prospective employer or employer's agent was advised that the Plaintiff had "never been employed by Defendant AMERICAN" and that Defendant AMERICAN did not verify any of Plaintiff's employment or work history with AMERICAN.

7. The Plaintiff further states that the Defendant AMERICAN actively and knowingly induced said prospective employers to refuse to hire or recruit the Plaintiff, and that said acts of Defendants were undertaken with an intent to cause the Plaintiff emotional harm and detriment.

8. Plaintiff further states that but for the tortious interference with the aforestated advantageous relationships by the Defendant AMERICAN, she would have been recruited for employment by a great number of the prospective airline employers with whom she had interviewed and where she had advanced to the final consideration interview subject only to

reference verification from Defendant AMERICAN and check; and that on account of aforesaid tortious interference with the advantageous relationships, the Plaintiff was summarily denied employment.

9. In addition to the actual damages sustained on account of said tortious interference by Defendant AMERICAN with Plaintiff's advantageous relationships, Plaintiff also alleges she has sustained substantial emotional and mental harm and suffering due to the damaging effect of said interference on her overall emotional and physical well-being.

10. Plaintiff further alleges that said acts and conduct of the Defendants is undertaken with willful and wanton disregard for her well-being and is further intended to annoy, vex, injure and harm the Plaintiff in the manner stated by her in her Complaint.

WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in the amount of Five Hundred Thousand Dollars ($500,000).

2. For specific damages in an amount to be ascertained herein.

3. For compensatory damages in an amount of Five Hundred Thousand Dollars ($500,000).

4. For punitive damages in the amount of Five Hundred Thousand Dollars ($500,000) because of the persistent, malicious and intentional bad faith carried out by the Defendants; and

5. For such other relief the Court may deem necessary and appropriate.

COUNT VII

1. Plaintiff realleges every allegation set out in Counts I thru VI inclusive as though fully alleged in support of Count VII herein. Further, all allegations in support of Count VII are to be realleged and incorporated in support of Counts I thru VI inclusive.

2. Plaintiff specifically avers that the Defendant UNION did knowingly abandon her grievance after it was docketed with the Systems Board of Adjustment with actual knowledge that the Plaintiff's grievance was meritorious and that her discharge was spurious and trumped up and achieved by personal malice by Defendant AMERICAN and Defendant BAUER.

3. Plaintiff further avers that said abandonment of her grievance by Defendant UNION after it was lodged was done with the Defendant's awareness of her peculiar susceptibility to said withdraval of representation and was the proximate cause of the Plaintiff's incapacity to prosecute her grievance consistent with the expectation created in her by the Defendant UNION's representations, actions, and the like.

4. Plaintiff further alleges that said acts of abandonment and misrepresentations concerning the purported review and investigation of the Plaintiff's grievance by the Defendant UNION were intended to delimit the right of the Plaintiff--a

member in good standing of said Defendant UNION--to actively prosecute an action against the Defendant AMERICAN and Defendant UNION in either a federal court of law or before the appropriate administrative tribunal and that said acts produced the harm and results intended by the Defendants.

5. Plaintiff further avers that said conduct was done to advance the interest of the Defendant UNION at the expense of the Plaintiff and otherwise was undertaken to deny the Plaintiff her equal rights engendered under 29 USC Section 411 and further designed to disenfranchise the Plaintiff, leaving her defenseless against the wronging Defendant AMERICAN, responsible for her unwarranted discharge.

6. Plaintiff also states that the Defendant UNION's conduct was arbitrary, capricious, and grossly discriminatory and that said Defendant UNION did not exercise the due diligence expected of it, nor did it comport itself consistent with the care of a reasonable, prudent man in like circumstances, in the alternative.

7. Plaintiff further avers that the Defendant UNION's conduct was undertaken with an intent to injure, annoy and vex the Plaintiff and with her peculiar susceptibility to its effect and further designed to disenfranchise the Plaintiff from vindicating her grievance legitimate and meritorious on its face.

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WHEREFORE, the Plaintiff prays for damages as follows:

1. For general damages in an amount of Five Hundred Thousand Dollars ($500,000);

2. For actual damages in accordance with proof;

3. For compensatory and punitive damages on account of the Defendat UNION's gross violation of the Plaintiff's statutory bill of rights, causing her to refrain in vindicating her grievance undertaken with malice and an intention to discriminate against the Plaintiff and for the resulting emotional and mental torment visited upon the Plaintiff as a consequence thereof;

4. For costs of suit;

5. For such further and alternative relief as the Court may deem necessary to redress the Defendant's violation of its statutory duty of good faith and the harm sustained by the Plaintiff as a result of the Defendant UNION's violation of her statutory bill of rights.

Dated: March 2, 1981

Respectfully submitted:

BY: _____

EUGENE JOHN CARELLA, ESQ.
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STATE OF CALIFORNIA—HUMAN RELATIONS AGENCY

RONALD REAGAN, Governor

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
714 P STREET, SACRAMENTO 95814



ROBERT W. SHOB
Chairman
LOWELL NELSON
Vice Chairman
CLAIRE HANNAN
JOHN L. WEISS
DON MURPHY

N O T I C E

Paula E. Pfister
11728 Wilshire Boulevard
Los Angeles, California 90025

APPEALS BOARD DECISION NO. 70-5019

Enclosed is a copy of the decision of the California Unemployment Insurance Appeals Board in this matter.

Section 410 of the California Unemployment Insurance Code provides:

> "A decision of the Appeals Board is final, except for such action as may be taken by judicial tribunal as permitted or required by law."

The Attorney General has ruled that under this section of the code the Appeals Board cannot review, rehear, reconsider, or set aside its decision. (37 Ops. Cal. Atty. Gen. 133) Therefore, the board may not act upon a request to reopen the appeal and reconsider the enclosed decision.

Any action to obtain a court review of the decision must be initiated by you. The Appeals Board cannot advise you as to the procedure which must be followed in the preparation and filing of any such action.

DATE MAILED: DEC 15 1970

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

PAULA E. PFISTER
(Claimant)
11728 Wilshire Boulevard
Los Angeles, California

S.S.A. No. 185-34-1930

AMERICAN AIRLINES
(Employer)
Los Angeles International Airport
Los Angeles, California

Employer Account No. 016-0027

BENEFIT DECISION

Case No. 70-5019

The employer appealed from Referee's Decision No. LA-1812 which held that the claimant was entitled to benefits under the Unemployment Insurance Code and that the employer's account is not relieved of charges under section 1032 of the code.

After a careful review of the record which includes the testimony and evidence adduced before the referee and after having found that no material errors of fact or law appear to have been made, we adopt the statement of facts and reasons for decision of the referee as our statement of facts and reasons for decision.

The decision of the referee is affirmed. Benefits are payable as provided in the referee's decision and the employer's account is not relieved of charges.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT

LOWELL NELSON

CLAUDE MINARD

013-06210
DATE MAILED: DEC 15 1970
DE 3231 REV. 12 (1-70)

State of California

DECISION OF THE REFEREE

In the Matter of:

Paula E. Pfister
11723 Wilshire Boulevard
Los Angeles, California 90025

Claimant-Appellant

SSA No.: 115-34-1930

American Airlines
633 Third Avenue
New York, New York

Employer

Account No. 016-0027

LOS ANGELES REFEREE OFFICE

Case Number: LA-1 32

Date Appeal to Referee Filed:
July 19, 1970

Time and Place of Hearing:
October 2, 1970
Santa Monica, California

Parties Present:
Claimant
Employer
Department

STATEMENT OF FACTS

The claimant appealed from a Department determination which disqualified her for unemployment compensation benefits commencing June 7, 1970 and continuing until she had earned $210, or more, on the ground that she was discharged for misconduct connected with her work. A Department ruling held the employer's reserve account relieved of benefit charges.

The claimant was last employed as an airline stewardess from June 17, 19 5 until she became separated on June 17, 1970 under the following circumstances.

The employer has reciprocal agreements with other airlines, including Alitalia Airlines, in which its employees may fly on the other airlines at a reduced rate but this does not include the parents of the employee. The employer allows its employees and their relatives to fly on its own airline at discount rates. The rules are set forth in the stewardess manual and in various regulations of the employer. The manual and regulations were made available to the claimant. The claimant testified that the regulations are vague and that the rules constantly change with new regulations that are issued from time to time.

In August or September of 19 9, while the claimant was on a flight while on duty with her employer, a sales manager of Alitalia Airlines was also on that

Date Mailed: October 19, 1970
013-A 21

REV

flight and told her that Alitalia Airlines and the claimant's employer had reciprocal agreements wherein the claimant and her relatives, including her mother, could fly their airline at a reduced rate. She was told that her mother was eligible to fly at the reduced rate as long as she went too. On April 23, 1970, the claimant obtained written authorization for a discount ticket on Alitalia Airlines but the authorization was issued solely in the name of the claimant. When the claimant decided to take her mother for a trip on Alitalia Airlines she delivered the authorization to Alitalia Airlines, or its representative. She assumed her mother was also eligible for the discount because of the representations of the sales manager from Alitalia Airlines. She did not verify this information with her employer. A friend of the claimant testified that he saw the claimant relinquish possession of the written authorization of April 23, 1970, and the words "and mother" were not on the authorization at that time. The claimant denies inserting the words "and mother". The claimant and her mother took a trip on Alitalia Airlines from May 10 to May 17, 1970 at a reduced rate.

When the written authorization was returned to the employer, the words "and mother" had been typed on it. On June 17, 1970, the claimant saw the authorization and for the first time she saw the words "and mother" typed on it. The claimant was discharged from employment on June 17, 1970. The employer testified that the claimant was discharged for forging the words "and mother" to the authorization and for the dishonest act and for misrepresentation.

REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges, if the claimant has been discharged for misconduct connected with his most recent work.

The California District Court of Appeals in Parker Glass Company v. Stewart (1959), 170 Cal. A p. 2d 719, 339 P. 2d 947, held that the term "misconduct", as it appears in section 1256 of the code is limited to conduct which shows wilful or wanton disregard of the employer's interest, such as deliberate disregard of the standards of behavior which the employer has a right to expect of his employees or carelessness or negligence of such a degree or recurrence as to show wrongful intent or evil design. On the other hand, the Court continued, mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not "misconduct". The Court also held that the employer has the burden of establishing "misconduct" to protect its reserve account.

In this case, there is no direct evidence of forgery on the part of the claimant. She denies inserting the "and mother". When she delivered possession

of the authorization to Alitalia Airline, or its representative, those words did not then appear. When the authorization was returned to her employer the words were then on the authorization. Under these circumstances, it is reasonable to assume that those words were added during the interval from the time the claimant delivered the authorization to Alitalia Airlines, or its representative, to the time when the employer received it. The claimant relied in good faith upon the representation of the sales manager from Alitalia Airlines. She testified that the regulations change from time to time. While there may be evidence of carelessness or of good faith error in judgment on the part of the claimant in not verifying the information with her employer, the referee finds that the claimant did not intentionally fail or refuse to her employer nor act in wanton disregard of that duty. Under these circumstances, the referee finds that the claimant was not discharged for misconduct connected with her work within the meaning of section 12F.

DECISION

The determination and order of the Department are reversed. The claimant is not disqualified for benefits under code section 12F. The employer's reserve account is chargeable.

[illegible], Referee

AA-1732
jmh

-3-

U.S.
FILED
AUG 29 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-167

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

PAULA E. PFISTER,

Petitioner,

vs.

AMERICAN AIRLINES, INC., a Corporation;

BARBARA BAUER, Stewardess Supervisor/ Employee of AMERICAN AIRLINES, INC.;

IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.;

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552 AFL-CIO;

HONORABLE MANUEL REAL, JUDGE OF THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA;

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

JOINT BRIEF OF RESPONDENTS IN OPPOSITION

[List of Counsel Inside Cover]

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UNION LOCAL 550/552 AFL-CIO

QUESTIONS PRESENTED

1. Whether Pfister has set forth sufficiently compelling reasons to invoke discretionary review of this Court.

2. Whether Pfister's statute of limitations argument presents a "specific and important reason" for granting review by this Court.

3. Whether Pfister's claim of irregularities in the proceedings below is sufficient to invoke this Court's power of supervision.

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No. 83-167

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

PAULA E. PFISTER,

Petitioner,

vs.

AMERICAN AIRLINES, INC., a Corporation;

BARBARA BAUER, Stewardess Supervisor/ Employee of AMERICAN AIRLINES, INC.;

IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.;

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552 AFL-CIO;

HONORABLE MANUEL REAL, JUDGE OF THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA;

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

JOINT BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The judgments of the United States Court of Appeals for the Ninth Circuit and the District Court for the Central District of California are unreported.

The opinion of the United States District Court for the Central District of California is reprinted in Appendix A.

The opinion of the United States Court of Appeals for the Ninth Circuit is reprinted in Appendix B.

STATEMENT OF JURISDICTION

Pfister seeks to invoke this Court's jurisdiction under 28 U.S.C. Section 1651, and Rules 17 and 26 of the Supreme Court Rules.

STATUTES INVOLVED

The following statutes and Supreme Court Rules are reprinted in Appendix C: 28 U.S. § 144; Rules 17, 26 and 49.2 of the Supreme Court Rules; and Sections 338(1) and 170.6(1) of the California Code of Civil Procedure.

STATEMENT OF THE CASE

Petitioner, Paula E. Pfister (hereinafter "Pfister"), is a former employee of Respondent American Airlines, Inc. (hereinafter "American") and a former member of Respondent Airline Stewards and Stewardesses Association, Transport Worker's Union of America, AFL-CIO, Local 550/552 (hereinafter "Union"). American is a carrier by air subject to the provisions of the Railway Labor Act, 45 U.S.C. §§ 151, et seq.

Pfister's action herein arises out of her discharge by American for misconduct in June of 1970.

Pfister filed her original Complaint on or about November 1, 1978. On November 28, 1978 American filed its Motion to Dismiss the Complaint for failure to adequately allege diversity jurisdiction.

On January 11, 1979, the District Court issued its order granting American's Motion to Dismiss and allowed Pfister thirty (30) days leave to amend.

On February 14, 1979, Pfister filed her First Amended Complaint. On March 9, 1979, American filed its Motion to Dismiss the First Amended Complaint for failure to adequately allege diversity jurisdiction.

On May 3, 1979, the District Court issued its order granting American's Motion to Dismiss the First Amended Complaint and allowed Pfister thirty (30) days to amend.

On June 12, 1979, Pfister filed her Second Amended Complaint. On June 29, 1979, American filed its Motion to Dismiss the Second Amended Complaint for failure to adequately allege federal-question jurisdiction. On July 11, 1979 Union filed its answer to the Second Amended Complaint.

On August 22, 1979, the District Court issued its order granting American's Motion to Dismiss the Second Amended Complaint. This order allowed Pfister sixty (60) days leave to amend her Complaint.

Instead of amending her Complaint, Pfister filed a Notice of Appeal on September 17, 1979.

On or about October 7, 1980, the U.S. Court of Appeals for the Ninth Circuit issued its order dismissing Pfister's appeal, sua sponte, for lack of jurisdiction. This Court's order was based on the ground that the appeal was not taken from a final order and informed Pfister that she should "move in the District Court for permission to file an Amended Complaint."

On March 3, 1981, Pfister filed her Third Amended Complaint without obtaining leave to amend from the District Court. On March 26,

1981, American and Union filed Motions to Dismiss the Third Amended Complaint for failure to adequately allege federal-question jurisdiction, failure to state a cause of action arising under federal law which would not be barred by the applicable statute of limitations, and failure to seek leave to amend.

On June 8, 1981, Pfister filed her Application for Disqualification of District Court Judge Manuel Real. On the same day, the District Court by Judge Malcolm M. Lucas, issued its order denying Pfister's Application.

On June 9, 1981, the District Court issued its order granting American's Motion to Dismiss the Third Amended Complaint without leave to amend on the grounds that Pfister's allegations failed to state a claim under federal law, Pfister's action was barred

by the applicable statute of limitations, Pfister's allegations failed to set forth any facts sufficient to toll the applicable statute of limitations and Pfister failed to apply for leave to amend.

On June 17, 1981, Pfister filed her Notice of Appeal.

On November 4, 1982, Pfister's appeal was argued before the U.S. Court of Appeals for the Ninth Circuit.

On January 5, 1983 the Ninth Circuit Court of Appeals issued its memorandum opinion affirming the District Court's ruling on the ground that Pfister's federal claim was barred by the applicable state statute of limitations set forth in California Code of Civil Procedure Section 338 and that Pfister had not alleged and had not shown that she could allege facts which would toll the statute of limitations.

On or about January 18, 1983 Pfister filed a Petition for Rehearing En Banc with the Ninth Circuit Court of Appeals.

On May 16, 1983 the Ninth Circuit Court of Appeals issued its order unanimously denying Pfister's Petition for Rehearing.

On August 2, 1983 Pfister filed her Petition for Writ of Certiorari herein.

SUMMARY OF ARGUMENT

Pfister has failed to demonstrate that her case merits review by this court. The arguments raised by Pfister are groundless and represent an attempt to relitigate issues already addressed and decided by the courts below.

ARGUMENT

I.
PFISTER'S PETITION FAILS TO SET FORTH SUFFICIENTLY COMPELLING REASONS FOR A REVIEW PURSUANT TO A WRIT OF CERTIORARI.

Pfister's petition raises three issues for consideration on review.

First, Pfister contends that the Ninth Circuit Court of Appeals failed to recognize the District Court's "sufficient primary jurisdiction" over her claim under the Railway Labor Act. Specifically, Pfister contends that the Ninth Circuit did not "accord deference" to this Court's holdings in Vaca v. Sipes, 386 U.S. 171 (1966); Glover v. St. Louis - S.F.R. Co., 393 U.S. 324 (1969); and Hines v. Motor Freight, Inc., 424 U.S. 554 (1976) (Petition, page 43-45).

Secondly, Pfister argues that the Court of Appeals improperly applied the applicable

statute of limitations in holding that her federal claim was barred. (Petition, page 54-60).

Thirdly, Pfister contends that the Court of Appeals committed error in not permitting her counsel of record, Eugene J. Carella, to appear before it, and in not preserving tape transcripts of the oral hearing on appeal. (Petition, page 60-64).

The issues raised by the foregoing arguments as presented in Pfister's petition do not satisfy the criteria generally followed by this Court in granting review on a Writ of Certiorari. According to Rule 17 of the Supreme Court Rules: "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Sup. Ct. R. 17.

Some of the "special and important reasons" for granting review recognized by Rule 17 include conflicting decisions of the Federal Courts of Appeals on the same matter; a decision by the Court of Appeals on an important question of federal law which has not been, but should be, settled by this Court; or a decision by a Federal Court of Appeals on a federal question which is in conflict with applicable decisions of this Court. Sup. Ct. R. 17.

Certiorari is not an appropriate vehicle by which to review issues which are not in conflict and which have already been addressed and decided by the Court of Appeals. In Rogers v. Missouri Pacific Railroad Co., 352 U.S. 500, 530-31 (1957), Justice Frankfurter, dissenting, took exception to the Court's all too frequent grant of certiorari in FELA

cases. In discussing the proper scope of certiorari, Justice Frankfurter stated in pertinent part:

> . . . [S]uch cases could be reviewed by the Supreme Court only on certiorari to 'secure uniformity of decision' between the Circuit Courts of Appeals and 'to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing . . . . These remarks, of course, apply also to applications for certiorari to review judgments and decrees of the highest courts of States.' (Citations omitted)

In Hamilton-Brown Shoe Company v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916), this Court stated that certiorari jurisdiction is: ". . . a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decisions."

Pfister must show that her case is of "importance to the operation of our federal system" and not "merely to the parties" involved. Rogers, 352 U.S. at 540; see also Carter v. Atlanta & St. A.B.R. Co., 338 U.S. 430 (1949).

Nowhere in Pfister's petition does she demonstrate how her claim falls within the parameters discussed by the above-cited authorities. She has not presented a single issue which is the subject of conflicting decisions of the Court of Appeals, or which presents a conflict between decisions by the Court of Appeals and a decision by this Court.[1]

1. In this regard, it should be noted that Pfister's arguments concerning the application of original federal question jurisdiction under the Railway Labor Act have no bearing on the Ninth Circuit's decision in this case. Although the issue was argued before the Ninth Circuit, it was not the basis of the Ninth Circuit's opinion.

Respondents submit that Pfister is improperly asking this Court to relitigate factual determinations made by the courts below. The mere dissatisfaction of a party is not sufficient to invoke Supreme Court review. As stated in Supreme Court Practice,

> Lawyers, of course, are likely to regard any case they have lost in a lower court as necessarily in conflict with some Supreme Court decision or doctrine; that is what makes the ruling below 'erroneous.' But such a loose reading of the Rule [17] concept of a decision 'in conflict with applicable decisions of this court' does not satisfy the Supreme Court's understanding of what constitutes a conflict, and will not be sufficient to obtain a grant of certiorari. A true conflict, in other words, must be direct and irreconcilable, and must be demonstrably so.

R. Stern & E. Gressman, Supreme Court Practice, at 273 (1978).

II.
PFISTER'S ARGUMENT CONCERNING THE STATUTE OF LIMITATIONS DOES NOT PRESENT A "SPECIAL AND IMPORTANT REASON" FOR GRANTING REVIEW ON A WRIT OF CERTIORARI.

Pfister argues that the Ninth Circuit committed error in holding that Pfister's claim under the Railway Labor Act was barred by the statute of limitations set forth in California Code of Civil Procedure Section 338. Specifically, Pfister argues for the first time that New York's six year limitation period for an action based upon a contractual obligation should have been applied. This novel argument was not raised in the proceedings in the Ninth Circuit. Pfister conceded then, and the Ninth Circuit agreed, that the appropriate statute of limitations is California's Section 338.

The authority cited by Pfister in support of her resort to the New York contract statute, Abrams v. Carrier Corporation, 434 F.2d

1234 (2d Cir. 1970), is distinguishable simply because it was a case arising in and litigated in New York. Pfister cannot demonstrate that the holding in Abrams conflicts with the Ninth Circuit's holding in Price v. Southern Pacific Transportation Company, 586 F.2d 750, (9th Cir. 1978), followed in this case, because both decisions simply applied the settled rule that the federal courts must look to the analogous statute of limitations under state law to determine the limitations period applicable to the federal cause of action.

Pfister's reliance on this Court's holding in United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1981), is also misplaced. In that case, this Court granted certiorari to resolve a direct conflict between the second and third circuits concerning the application of identical statutes of limitation. Id. footnote 1 at 60. There is no similar conflict presented in this case.

Pfister's assertion that the Ninth Circuit committed error by not making a determination as to which statute of limitations applied is totally groundless since that court's memorandum opinion states quite clearly that the applicable period of limitations is set forth in Code of Civil Procedure Section 338. (Appendix B)

III.

PFISTER'S CLAIMS OF "GROSS IRREGULARITIES" COMMITTED BY THE DISTRICT COURT AND COURT OF APPEALS ARE COMPLETELY UNFOUNDED, AND DO NOT WARRANT THE EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Pfister contends that the District Court's order denying her application to disqualify the Honorable Manual Real constituted error. This issue was addressed in Pfister's appeal to the Ninth Circuit and rejected on the ground that she had failed to set forth any indication of extrajudicial bias or prejudice as required by 28 U.S.C. Section 144. Pfister's insistence that she

may preemptorily disqualify a federal district judge by invoking California Code of Civil Procedure Section 170.6 is without basis in reason.

Pfister next argues that the Ninth Circuit erred in refusing to permit Eugene J. Carella to represent her at the oral argument on appeal.

Pfister's petition fails to disclose the circumstances under which her counsel's admission to the bar of the Ninth Circuit Court of Appeals was revoked. The most that is said about the subject is contained at page 33-34 of Pfister's petition: ". . . the U.S. Court of Appeals Circuit Judges Norris and Wright willfully, and in furtherance of a conspiracy, prevented petitioner's undersigned counsel from representing her before the U.S. Court of Appeals for the Ninth Circuit despite his outstanding reputation

as a federal practitioner and appellate advocate." Pfister's unsupported and outrageous allegation of a conspiracy between the judges of the Ninth Circuit falls far short of establishing a cause for review. A federal court must have the power and discretion to establish and enforce the qualifications and standards of conduct of the attorneys admitted to practice before it.

Lastly, Pfister asserts that she was denied the right to a short continuance to secure substitute counsel to represent her at the oral argument. (Petition, page 64). Although Pfister declines to state when the need for new counsel first became apparent, a review of Appendix K to her petition indicates that she was representing herself in propria persona as early as September 25, 1982, over a month before the hearing date of November 4, 1982, and a month before she filed her emergency Motion for Continuance (Appendix I to

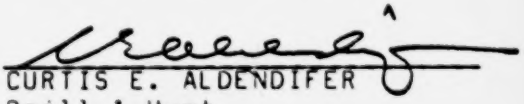
the petition) on October 25, 1982. Pfister had more than enough time to obtain substitute counsel, if that was her desire. There was nothing irregular or unusual in the Ninth Circuit's order denying her emergency Motion for Continuance.

CONCLUSION

Respondents submit that Pfister's petition fails to raise any issues which are appropriate for review on certiorari. In fact, the claims raised by Pfister are frivolous as that term is defined by Justice Frankfurter in Rogers, 352 U.S. at 537: "'Frivolous' meaning that the issues are not deserving of consideration for review . . .".

Respondents therefore submit that Pfister's petition for Writ of Certiorari should be denied as frivolous. Respondents further request that the Court award appropriate damages to respondents in accordance with Rule 49.2 of the Supreme Court Rules.

Respectfully submitted,



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LOCAL 550/552 AFL-CIO

August 26, 1983

APPENDIX A

Attorneys for Defendant,
AMERICAN AIRLINES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAULA E. PFISTER,	)	CIVIL ACTION NO.
	)	78 4216 R(Gx)
Plaintiff,	)	
	)	ORDER OF DISMISSAL
vs.	)	
	)	
AMERICAN AIRLINES, INC. a Corporation, et al.,	)	
	)	
Defendants.	)	
	)	

The Motions of defendants, AMERICAN AIRLINES, INC. and AIRLINE STEWARD AND STEWARDESSES ASSOCIATION, TRANSPORTATION WORKER'S UNION LOCAL 550/552, ALF-CIO, for an Order Dismissing plaintiff, PAUL E. PFISTER's Third Amended Complaint were heard on June 8, 1981, by the Honorable Manuel L. Real, District Judge presiding.

The Court, having considered the moving and opposition papers, as well as oral argument, grants defendants' Motions on the following grounds:

1. Plaintiff has failed to apply for leave to file her Third Amended Complaint.

2. Plaintiff's action is barred by the applicable Statute of Limitations.

3. Plaintiff's allegations fail to set forth any facts sufficient to toll the applicable Statute of Limitations.

4. Plaintiff's allegations fail to state a claim under Federal law. (handwritten in).

IT IS THEREFORE ORDERED that plaintiff's Third Amended Complaint be dismissed without leave to amend.

DATED: June 9, 1981

(Name stamped in)
MANUEL L. REAL
UNITED STATES
DISTRICT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA E. PFISTER, Plaintiff-Appellant, vs. AMERICAN AIRLINES, INC. a Corporation; BARBARA BAUER, Stewardess Supervisor/Employee of AMERICAN AIRLINES, INC.; IRVING CURHAN, Director of Flight Service/ Employee of AMERICAN AIRLINES, INC.; AIR LINE STEWARDS and STEWARDESSES ASSOCIATION, TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO, Defendants-Appellees.	No. 81-5550 D.C. No. 78-4216-R MEMORANDUM

Appeal from the United States District Court
For the Central District of California
The Honorable Manuel L. Real, Presiding
Argued and Submitted November 4, 1982

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges.

Pfister appeals the district court's dismissal of her third amended complaint without leave to amend. She asserts that (1) Judge Lucas abused his discretion by failing to grant her motion to have Judge Real removed from the case; and (2) Judge Real subsequently

erred in dismissing her third amended complaint, which she alleges was both substantively sufficient and appropriately filed. We affirm.

Pfister argues first that Judge Real's dismissal of her third amended complaint has no legal effect because Judge Lucas erred in failing to grant her motion to have Judge Real replaced. To successfully challenge a judge for bias, a party must file a legally sufficient affidavit indicating that "the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144. The affidavit is not legally sufficient "unless it specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source." United States v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980). Pfister's affidavit contends only that Judge Real "sua sponte ordered a status conference and hearing on Defendant's motions to dismiss for June 8, 1981, with only a few days' notice." This allegation affords no indication of extrajudicial bias or prejudice, and we therefore uphold Judge Lucas' denial of Pfister's section 144 motion.

Pfister next contends that Judge Real erred in dismissing her third amended complaint. The major justification for the dismissal of Pfister's third amended complaint was that it failed to allege federal question jurisdiction and a claim for relief arising under federal law which would not be barred by the applicable statute of limitation.

We agree that this action was not timely filed. Wrongful discharge claims brought under the Railway Labor Act constitute federal actions, but their timeliness is governed by the appropriate state statute of limitations. Price v. Southern Pacific Transp. Co., 586 F.2d 750, 752 (9th Cir. 1978). As Pfister concedes, Cal. Civ. Proc. Code § 338, which creates a three-year statute of limitations, is applicable here. See Id. at 753 (§ 338 applied in similar case in which plaintiff resided and was employed in California, and all pertinent events took place there). Pfister did not file her claim until nearly eight years after her discharge and six years after the union's action is settling the grievance.

Pfister argues that the statute was tolled by the appellees' fraudulent concealment of material facts. Under California law, the existence of such fraudulent concealment, if properly established, caused the applicable statute of limitations to be tolled. Baker v. Beech Aircraft Corp., 39 Cal.App.3d 315, 321 (1974). However, "[t]he existence of such fraud must be alleged clearly and unequivocally, and must not rest upon inferences." Id.

The allegations of Pfister's complaint would indicate that Pfister may have had a claim for relief in 1972, but they do not indicate that this possible claim was fraudulently concealed from her so as to toll the applicable statute of limitations. This was the third attempt to amend the complaint to state a claim under federal law. There is no indication that there are facts justifying a fourth amendment. It was not an abuse of discretion to dismiss the complaint without further leave to amend.

AFFIRMED.

APPENDIX C

28 U.S.C. § 144 - Bias or Prejudice of Judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

SUPREME COURT RULES

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on

the same matter; or has decided a federal question in a way in conflict with a state court of last resport; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort of of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question, in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

Rule 26. Considerations governing issuance of extraordinary writs

The issuance by the Court of any extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequaate relief cannot be had in any other form or from any other court.

Rule 49.2. Interest and Damages

.2. When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

California Code of Civil Procedure § 338(1)

Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture.

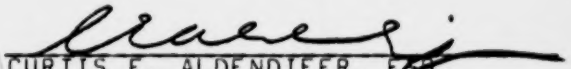
California Code of Civil Procedure § 170.6(1)

(1) No judge, court commissioner, or referee of any superior, municipal or justice court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein which involves a contested issue of

law or fact when it shall be established as hereinafter provided that such judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding.

CERTIFICATE OF COUNSEL

I, Curtis E. Aldendifer, Esq., counsel for Respondents and a member in good standing of this court, do hereby certify that the within Brief in Opposition to the Petition for Writ of Certiorari and/or Petition for Writs of Mandamus, Prohibitation or the Like directed to the U.S. District Court for the Central District of California and U.S. Court of Appeals for the Ninth Circuit designated herein is presented in good faith to fully ensure and protect the cause and rights of Respondents, and is not filed for purpose of delay.



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CERTIFICATE OF SERVICE AND FILING

I, Curtis E. Aldendifer, Esq., do hereby certify that on this 26th day of August 1983, I duly served true copies of the within document, entitled JOINT BRIEF OF RESPONDENTS IN OPPOSITION, on all parties of record and all respondents named herein, by placing three (3) true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Eugene J. Carella
P.O. Box 67292
Century City Station
Los Angeles, CA 90067
90292

Fogel, Rothschild,
Feldman and Ostrov
5900 Wilshire Blvd.
Suite 2600
Los Angeles, CA 90036

Manuel Real, Judge
U.S. District Court
312 N. Spring Street
Los Angeles, CA 90012

Judges, U.S. Court
of Appeals for the
Ninth Circuit
7th & Mission Street
Box 547
San Francisco, CA 94101

Further, on August 26, 1983 I served the foregoing document upon the Clerk of the United States Supreme Court, by mailing forty (40) true copies thereof to said court, addressed as follows:

Clerk of the United States Supreme Court
Washington, DC 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 26, 1983 at Los Angeles, California.

CURTIS E. ALDENDIFER